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NO 80-250

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

VIRGINIA CRAMER, PETITIONER-DEFENDANT IN WRONGFUL FORECLOSURE ACTION,

PETITIONER

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARD and JOHN C. DENYER, JOINTLY, SEVERALLY AND INDIVIDUALLY, PLAINTIFFS IN WRONGFUL FORECLOSURE ACTION,

McCLINTOCK DONOVAN CARSON & ROACH AND JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, ATTORNEYS AT LAW, JOINTLY, SEVERALLY AND INDIVIDUALLY,

ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, ATTORNEYS AT LAW, JOINTLY, SEVERALLY, AND INDIVIDUALLY,

FEDERAL HOME LOAN BANK BOARD, DIRECTOR AND/OR OFFICIAL AND/OR OFFICER IN CHARGE,

MICHIGAN SUPREME COURT MEMBERS, JUSTICES MARY S. COLEMAN, THOMAS GILES KAVANAGH, CHARLES L. LEVIN, JOHN W. FITZGERALD, JAMES L. RYAN, BLAIR MOODY, JR., and G. MENNEN WILLIAMS, JOINTLY, SEVERALLY AND INDIVIDUALLY,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ~~AND TO THE MICHIGAN SUPREME COURT~~

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TABLE OF CONTENTS

	Page
OPINIONS BELOW	5
QUESTIONS PRESENT FOR REVIEW	6-11
JURISDICTION	12-14
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	15
STATEMENT OF THE CASE	16-18
BACKGROUND OF FACTS	18-51
POINT I	51
POINT II	54
POINT III	56
POINT IV	60
POINT V	65
POINT VI	72
POINT VII	74
POINT VIII	76
POINT IX	78
CONCLUSION	82

APPENDIX

	Page
APPENDIX AA - Michigan Supreme Court - 401 Mich 252	A-1
APPENDIX BB - Mortgage Covenant	A-12
APPENDIX CC - Nortgage Note	A-18
APPENDIX DD - United States Distric Court Order 9-72789	A-20
APPENDIX EE - United States Court of Appeals, Sixth Cir. Order 80-1118	A-22
Petitioner's Appendix, Volume I	app.
Petitioner's Appendix, Volume II	app.

AUTHORITIES CITED

Page

Cases

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Jan. 1968, Judge Warren E.Burger

American Locomotive v Chemical Res.
1949, 171 F2 115 56

American Locomotive v Gyron Proc.
336 US 909, 69 S Ct 515 56

Barrows v Jackson, 346 US 249,
73 S Ct 1031 60

Continental Wall Paper Co v
Louis Voight & Sons, 212 US 227,
1909, 29 S Ct 280 58

Ex Parte Virginia, 100 US 339 80, 81

Faretta v California (Slip Opinion)
1975, No. 73-5772 68

Grummons v Zollinger, D.C. (1964)
240 F Supp, Affd, 341 F 2d 464 77

Howard v Green, C.A. Ark (1977)
555 F 2d 178 78

Huffman v Pursue, 420 US 592 79

Longyear v Toolan, 209 US 414 (1908)
28 S Ct 506 20

Muellen v Hoffman (1899) 174 US 639
19 S Ct 839 57

Schlemmer v Buffalo R & R Co.
205 US 1, 27 Sup Ct Rep 407 59

Shelley v Kraemer, 334 US 1,
68 S Ct 836 3, 54, 60, 73

Statutes and Regulations	Page
12 USC 1461	18
12 USC 1701	18
15 USCA 1 and 2, et seq	8, 28
28 USCA 1337	15
28 USCA 1454 (1)	13
28 USCA 1257 (3)	13
28 USC 1447 (d)	78
42 USCA 1983, 1985, et seq	13
Title 12, CFR 545.6-1	74, 75
MSA 23.540 (378) CL 1948, 4891778	26
MCLA 600.1430; MSA 27A.1430	14, 69
MCLA 3201; MSA 27A.3201	3, 6
MCLA 600.3105; MSA 27A.3105	9, 63
MCLA 600.3208; MSA 27A.3208	29, 60
MCLA 600.6052 (1) (2), MSA 27A.6052	33, 64

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TO THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

TO THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your Petitioner, Virginia cramer, in propria persona, hereby petitions for a writ of certiorari to review the Order of the United States Court of Appeals for the Sixth Circuit, entered without opinion on May 5, 1980, affirming dismissal of the action, cutting off litigation in ruthless violation of the Fourteenth Amendment to the United States Constitution, contravening Federal Rules of Appellate Procedure Rule 26 (a) and subparagraph 26 (c), Rule 27 (a) and Sixth Circuit Local Rules 8 and 9 in the absence of a motion to affirm and which would have been impermissable, and contravening the extension of time granted to May 20, 1980, for Petitioner-appellant to file her brief on appeal (See, docket entry 14, page 10a Volume I; and page 497a Volume II, No. 80-1118; pages 556a, 557a, Volume II, Petitioner's Appendix); and to review the Michigan Supreme Court decision

dated October 6, 1977, as reported at 401 Mich 252, herein appended as EXHIBIT "A", Volume I, pages 134a thru 145a, and again included herein as Appendix AA, Cramer vs Metropolitan Savings and Loan, et al.

The Michigan Supreme Court decision allows foreclosure of real property mortgaged, based upon so-called "escrow" funds for which the mortgagee (who requires said "escrow" funds) is "bound to do nothing" with said "escrow" funds collected as set forth in the provisions of a mass mortgage contract in wide-spread use by banking and lending institutions throughout the United States.

Further, the provisions of the unilateral restrictive covenant which requires a mortgagor to pay said "escrow" funds to the mortgagee (who is bound to do nothing with the "escrow" funds collected) also prohibit, inhibit, prevent and preclude a mortgagor from paying taxes, insurance

and other assessments as they become due on the real property mortgaged.

Further, the Michigan Supreme Court decision, reported at 401 Mich 252, is based on false facts, and said court refused to correct their defective decision on motions for rehearing and reconsideration; the basis of the said decision by the Michigan Supreme Court is the enforcement of the precise conduct made unlawful by the intent of the Sherman and Clayton Act (15 USC 1 and 2, et seq.), and/or alternatively, is in conflict with the controlling principle of Shelley v Kraemer, 334 US 1, 68 S Ct 836, 92 L Ed 1161, and Barrows v Jackson, 346 US 249, 73 S Ct 1031, 97 L Ed 1586.

Further, the Michigan Foreclosure by Advertisement Statute (MCLA 600.3201 et seq.; MSA 27A.3201 et seq.) as erroneously applied to "escrow" funds as a "condition" of the mortgage, contravenes and is repug-

nant to the Fourteenth Amendment of the United States Constitution, since the statute (on foreclosure) does not vest lenders with the function of assessing and collecting taxes on real property, and such function is unconstitutional as violative of the Fourteenth Amendment's due process clause, and such overreaching by the mortgagee-lending-institutions should be prohibited, when no taxes and no insurances are due; none were assessed, none were billed and none were unpaid, at the time of the foreclosure initiated by the mortgagee-Metropolitan Federal Savings and Loan Association, in the instant case.

Further, the decision of the Michigan Supreme Court (reported at 401 Mich 252) is "state action" involved in clear imprimatur of the offensive conduct of the mortgagee-lender in sanctioning such foreclosure and is repugnant to the due process and equal protection clauses of

the Fourteenth Amendment to the United States Constitution, and violative of the intent of the Sherman and Clayton Act, 15 USC 1 and 2 et seq., and in granting the mortgagee-lending institutions and banks a monopoly to enjoy the fruits of other people's money for which the mortgagee is "bound to do nothing," with the said "escrow" moneys belonging to the mortgagor. The "state action" involved is related to the challenged activity since the said "escrow" funds impliedly represent taxes as may, in the future, be assessed on said real property, but which is strictly the liability of the title-holder of the property, the mortgagor.

OPINIONS BELOW

The "Order" dated May 5, 1980, of the United States Court of Appeals, Sixth Circuit, is without opinion and unpublished. It is appended hereto as Appendix EE.

The "Order of Dismissal In Part and Order

of Remand In Part" dated January 17, 1980, entered in the United States District Court, Southern Division-Detroit, is without opinion and has not been published. It is appended hereto as Appendix DD.

The decision of the Michigan Supreme Court, under date of October 6, 1977, is reported at 401 Mich 252, and is included hereto as Appendix AA.

QUESTIONS PRESENTED FOR REVIEW

1. Is there a significantly close nexus between the State and the challenged action of a foreclosure based upon "escrow" moneys and State encouragement in judicial interpretation and enforcement of the Michigan Foreclosure by Advertisement statutory provisions as a "condition" of the mortgage, in repugnance to the Fourteenth Amendment to the United States Constitution, where said mortgagee utilized said foreclosure by advertisement statute (MCLA 600.3201 et seq.; MSA 27A.3201 et seq.) as a hostile

process and leverage to obtain said "escrow" moneys or forfeiture of the real property from the mortgagor, and with which said "escrow" moneys the mortgagee is bound to do nothing; Is "state action" involved in sanctioning the foreclosure and the possible taking of the property based on said requirements of "escrow" moneys for the mortgagee's self-dealing purposes when no taxes and no insurances were assessed, billed, due or unpaid, and there was no deficiency in mortgagor's "escrow" account; instead there was a credit surplus balance in "escrow" belonging to the mortgagor at the time of the foreclosure?

2. Is it a breach by the mortgagee, under the terms of a mortgage (promissory) note and the mortgage covenant and agreement, to retract the forbearance provisions or waiver terms of said mortgage note and to initiate a foreclosure action during the period of 15-days following the due

date for a current monthly installment, when no penalty or late charge is applicable for a payment made by a mortgagor during said 15-day period, and which said payment was then refused by the mortgagee "on account of the foreclosure"?

3. Is a mortgage contract illegal and/or unenforceable, by the intent of the Sherman and Clayton Act (15 USCA 1 and 2, et seq., Sections 1-7 and 12-27), where the provisions of said contract prohibits and/or inhibits a mortgagor from paying taxes and insurance on the real property mortgaged while a mortgagor is required by the terms of said mortgage covenant and agreement to pay "escrow" moneys to a mortgagee who is bound to do nothing with the said "escrow" moneys, and thereby lessening competition?

4. Is it a denial of due process of law, contravening the provisions and limitations of the Fourteenth Amendment to the United

States States Constitution, to effect a Sheriff's Sale of property, slandering title, where said Sheriff's Sale of October 1st was held and completed only three (3) days after the entry of a Court order (dated September 27th) which did not authorize said Sheriff's Sale but was effected contravening numerous Michigan State Statutes as a judicial foreclosure, among which, in violation of MCLA 600.3105; MSA 27A.3105 which required "after a judgment has been rendered * * * no separate proceeding shall be had for the recovery of the debt secured by the mortgage, or any part of it, unless authorized by the court." (emphasis added) Is the Sheriff's Sale and redemption thereof void or voidable ?

5. Did the State court err, in violation of Petitioner's independent constitutional right of self-representation and to proceed without counsel, in a civil action,

by requiring and forcing Petitioner to hire a lawyer who by fraud, concealment, deceit, and invidiously discriminatory practices in conflict of interests, caused the denial of due process of law and the denial of equal protection of the laws, by obstructing justice in conspiratorial misconduct; and is state action involved in contravention of the limitations imposed upon the State by the Fourteenth Amendment guarantees to your Petitioner?

6. In authorizing a mortgagee to proceed with the foreclosure based upon "escrow" moneys only, where no "default" on the part of the mortgagor was shown, no exhibits and no identifications were entered into the record by the mortgagee, or on behalf of the mortgagee, to support their allegations of a "deficiency" in "escrow"; and where the Michigan Supreme Court (at 401 Mich 252) decision sanctions the foreclosure pursuant to the state's

common-law policy of private right to contract, is the State judicial action immunized ?

7. Where mortgagee-lending-institutions claim they are "bound by federal regulations" to require "escrow" moneys as terms and conditions on all home mortgages granted, should the Federal Home Loan Bank Board be restrained and enjoined from refusing to issue cease-and-desist orders against the 5,000 or more associations, nationally, as participants of unsafe and unsound practices, where millions of mortgages are held with the so-called "escrow" clauses in monopolization of said funds, but unenforceable, and tending to be violative of 15 USCA 1 and 2, et seq., and in repugnance to the Fifth and Fourteenth Amendments to the Constitution of the United States ?

JURISDICTION

The "Order" of the United States Court of Appeals, Sixth Circuit, sought to be reviewed was made and entered on May 5, 1980. Rehearing was not sought for the reason that said Court of Appeals "Order" was entered prior to the submitting of Appellant's brief on appeal which was to have been filed on/or before May 20, 1980. The appeal sought was to have included the "Order of Dismissal In Part and Order of Remand In Part" entered on January 17, 1980 in the United States District Court, Southern Division-Detroit, and which your petitioner claims that it was error by the Court to remand to a jurisdiction other than from the jurisdiction where the "case" was pending at the time your petitioner-appellant sought "removal" of the entire State case matter to the Federal court. The statutory provision believed to confer jurisdiction on this Court to

review the "Order" of the United States Court of Appeals is 28 USC 1254 (1).

Further, the Michigan Supreme Court members are parties-defendants in this federal action commenced in the Federal district court, and involving said decision of the Michigan Supreme Court reported at 401 Mich 252, and the State case. Petitioner-Cramer invoked the provisions of 42 USCA 1983, 1985, et seq. in the Federal court action and where in the State case for which "removal" was sought, prior to removal, the Michigan Supreme Court refused to hear the matter to correct the defective decision as reported at 401 Mich 252. The statutory provision believed to confer jurisdiction on this Court to review the judgment in question is 28 USCA 1257(3) and under the provisions of Article III of the United States Constitution.

Further, Petitioner claims that "state action" is involved in being forced to hire an attorney and who caused the denial of

of due process of law and denial of the equal protection of the laws, in ruthless violation of her guaranteed constitutional rights and in repugnance to the provisions of the Sixth Amendment to the United States Constitution, in repugnance to the provisions of the Michigan Constitution of 1963, Article 1, section 13, and contravening statutory provisions as set forth in MCLA 600.1430; MSA 27A.1430. The statutory provision believed to confer jurisdiction on this Court to review the entire State case involving the invidiously discriminatory practices, malpractices, fraud, concealment and deceit of lawyers acting in perversion of camaraderi as conspirators and co-conspirators in obstructing justice, in exploitation practices against their own client, is 28 USC 1257 (3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment 5, United States Constitution, prohibiting the deprivation of property without just compensation;

Amendment 14, United States Constitution, as a limitation on governmental or state action, but not a limitation on private action.

42 USC 1983, 1985, et seq., 28 USC 1337, 15 USC 1 and 2, et seq.

Michigan Constitution of 1963, Article 1, Section 13, and MCLA 600.1430; MSA 27A. 1430 permitting appearance in person or by attorney.

STATEMENT OF THE CASE

The jurisdiction of the United States District Court (Southern Division-Detroit) was based upon 42 USCA 1983, 1985, et seq., and involving multiple defendants and co-defendants, as herein shown in the above-captioned case.

Petitioner Virginia Cramer (mortgagor in wrongful foreclosure action, hereinafter "mortgagor-Cramer") has never been allowed to have her day in court on said foreclosure, in ruthless violation of the Fourteenth Amendment to the United States Constitution, to prove that she was never in default of a certain mortgage loan and mortgage note and that there was no basis for the foreclosure action initiated by the mortgagee Metropolitan Federal Savings and Loan Association (hereinafter "mortgagee-Metro").

"Mortgagee-Metro" breached the terms and conditions of the divisible mortgage

note (divisible from the covenant) and initiated the foreclosure proceedings well within the 15-day forbearance or waiver period of the said mortgage note when no penalty or late charges would be applicable, and accelerated the principal debt balance based solely on their "requirements" for "escrow" funds for the alleged future liabilities of taxes and insurance when may become due on the real property mortgaged, in advance.

"Mortgagee-Metro" alleged an "escrow" deficiency in mortgagor-Cramer's "escrow" account when there was actually a credit balance in her "escrow" account, part of which was applied in reduction of the principal balance owing on the mortgage loan, as shown on the Sheriff's Bidding Statement of the sale of said mortgaged property; and part of which (escrow credit) was utilized by the mortgagee-Metro to pay the annual premium in advance for mortgage insurance to Mortgage Guaranty Insurance

Corporation (MGIC) approximately two (2) months after the said Sheriff's sale. The "escrow" credit balance were moneys belonging to mortgagor-Cramer.

BACKGROUND OF FACTS

On July 29, 1963, Petitioner-Cramer purchased her residence real property by obtaining a mortgage loan from Metropolitan Federal Savings and Loan Association, as follows:

Purchase price	$18,950.00
Down payment (cash)	2,450.00
Balance to mortgage	$16,500.00
Plus closing costs paid in Cash . . . . . which included "escrow" funds	$619.05

This was a conventional mortgage as distinguished from an FHA or VA mortgage. (See, 12 USC 1461, et seq.; 12 USC 1701, et seq. "National Housing Act", Federal statutory provisions under "Banks and Banking")

The "Loan Settlement Statement" itemized the monthly payments as follows:

Principal and Interest	$103.81
Tax Escrow	22.25
Insurance Escrow	4.00
MGIC (Mortgage Guaranty Insurance Corporation) escrow	3.44
	$133.50

The mortgagee-Metro has claimed that they are bound by federal regulations (Title 12, Code of Federal Regulations (CFR) 545.6-1 et seq.) to require "escrow" on all home mortgages granted, and that they are "bound to do nothing" with the "escrow" funds collected, which, also, they admit they invest said "escrow" funds realizing a gross profit on same, in self-dealing.

During the 56-month period of this mortgage (prior to foreclosure) mortgagor-Cramer conscientiously and diligently performed her covenant and paid "escrow" sums each and every month without fail, together with principal and interest on the mortgage note. She maintained an exemplary payment record. (See Complaint, Preamble, Appendix Volume I, pages 21a, 23a, et seq.)

From time to time, mortgagee-Metro required "excessive" escrow which mortgagor-Cramer disputed, recalculated and paid to said mortgagee. In the interim, mortgagee-Metro continually and consistently failed and refused to furnish mortgagor-Cramer with receipts or copies of receipts to account for and substantiate their so-called "requirements" for escrow. Mortgagor-Cramer never saw a tax bill or an insurance billing in her name as title-holder of the real property, prior to the foreclosure. Mortgagee-Metropolitan obtained these billings from the taxing authorities and insurance companies, directly, and mortgagor-Cramer was denied access to said billings, both before and after payment with her "escrow" funds, a denial of due process and in repugnance to the 14th Amendment to the U. S. Const. See, Longyear v Toolan, 209 US 414 (1908) 28 S Ct 506.

The annual statements as to this mortgage loan, as required of a mortgagee to furnish, were either/and/or illegible, not itemized, late in reaching mortgagor (for income tax purposes), omitted entirely, or with errors.

Further, mortgagee-Metro had been consistently late in paying mortgagor-Cramer's liabilities of taxes and/or insurance allowing said items to become seriously delinquent jeopardizing the security of "Cramer's" property, while collecting "escrow" funds each and every month which "cramer" paid without fail according to the aggregate sums required by mortgagee and shown on the installment-payment-cards as furnished by said mortgagee-Metro. Mortgagor-Cramer also paid additional amounts into the "escrow" account after disputing the "excessive" sums required by mortgagee-Metro.

After the 56-month period aforementioned,

mortgagor-Cramer complained to the several officers of Metropolitan Federal Savings and Loan that her "escrow" moneys were being mishandled and that she should be permitted to pay her own obligations and liabilities of taxes and insurance with her own money, instead of paying "escrow" funds to the said mortgagee; that they had failed to pay said taxes and/or insurance when due, that their bookkeeping was absent of talents in simple arithmetic, and that their "escrow" requirements were miscomputed in "excessive" amounts (called "cushioning" in the industry) by trickery in their estimating-method.

Where mortgagor-Cramer had paid considerably ahead of her repayment schedule, together with "escrow" funds, the mortgagee-Metro had complete and sole control of the allocation of the aggregate amounts as to principal, interest and "escrow".

While waiting for the mortgagee-Metro's reply to her request, and mortgagor-Cramer's

current singular installment payment due for May 15th (1968) was not paid on May 15th, the mortgagee-Metro initiated foreclosure proceedings on/or about May 16th, by advertisement (MCLA 600.3201 et seq., MSA 27A.3201 et seq.) without prior demand or notice. The first insertion of publication occurred on May 23 in the Detroit Legal News, entitled "Notice of Mortgage Sale," alleging "default" and "moneys secured" owing in the amount of $12,519.37. (The actual principal balance owing was $12,041.91, less the credit balance amounts in "escrow" which were mortgagor-Cramer's own funds.)

On May 29th (without knowledge of said publication of mortgage sale) mortgagor-Cramer paid the May 15th installment of principal and interest (within the 15-day forebearance or waiver period of the mortgage note) but which mortgagee-Metro later refused to credit on mortgagor's

loan "on account of the foreclosure", but never returned said check to mortgagor-Cramer.

The posting of the "Notice of Mortgage Sale" was made on May 31 which mortgagor-Cramer found tacked on her premises on June 1, contravening the Michigan Foreclosure by Advertisement Statute, MCLA 600.3201 et seq., MSA 27A.3201 et seq., for the reason that mortgagor-Cramer was not in default of the terms of the mortgage note, a separate instrument divisible from the so-called "escrow" clause of the mortgage covenant and agreement. The May 29th payment made during the unretractible waiver or forbearance period of 15 days, was the first in the history of said mortgage period of 56 months which did not include "escrow" funds, and was in the amount of $103.81.

At the time of the initiated foreclosure action, there was a surplus credit balance in mortgagor-Cramer's "escrow" account.

There was no deficiency. No taxes or insurances were assessed, billed, due or unpaid. Nothing was due and nothing was unpaid. The total dollar amount of $12,519.37 appearing in the May 23rd "Notice of Mortgage Sale" publication, and in subsequent publications, is herein itemized as follows:

Principal debt secured		$12,041.91
Interest 1 month & 8 days		76.43
Escrow credit surplus	$32.92	
Escrow for future taxes & insurance	433.95	
Difference required for "escrow"		401.03
		$12,519.37

The last payment, currently and timely paid by mortgagor-Cramer, and accepted by mortgagee-Metro, immediately prior to the initiation of the foreclosure, was allocated by mortgagee-Metro as follows:

April 26th -	Principal & Interest	$103.81
	Escrow	82.19
		$186.00
	Additional principal	10.17
		$196.17

Further, the said publication of the mortgage sale contravened MSA 23.540 (378),

CL 1948, 489.778, under Title 23--Banking and Private Finance, Savings and Loan Associations, specifying "Whenever a borrowing member is in arrears in the payment of principal or interest for 2 months or more, the board of directors may declare the loan in default and the whole amount of the loan due and payable * * * ." In the instant case, mortgagor-Cramer's installment payments were all currently paid through and including May 14th when the publication "Notice of Mortgage Sale" first insertion occurred on May 23rd, in violation of (Michigan) MSA 23.540 (378); CL 1948, 489.778.

Further, mortgagee-Metro refused to credit mortgagor-Cramer's timely payments made for May, June and July, for principal and interest, and returned the June and July checks to mortgagor, but not the check for May, saying in their letter, no moneys are acceptable "on account of the foreclosure."

The next tax billing, in July, was $101.33 for city taxes which mortgagor-Cramer paid directly in July (when due). The hazard insurance was paid in advance through the next year until July 29. The county taxes were not due until the following December (about 7 months after the initiation of the foreclosure on "escrow funds only, and accelerating the debt.

By the "excessive" demands of the mortgagee-Metro for "escrow" funds, the following would have resulted if mortgagor-Cramer had paid the "excessive" escrow required by mortgagee, and for which they foreclosed the mortgage loan:

Credit balance in "escrow"		$ 32.92
Escrow required as of May 10th (by telephone)	$433.95	
Difference required for "escrow"		401.03
		$ 433.95
May through December, "escrow" estimate for monthly installment, 8 months @ $82.19 per mo.		657.52
		$1,091.47
Obligations to be paid current year from escrow":		
July, City Taxes	$101.33	
Aug, MGIC Ins.	30.10	
Dec, County Taxes	491.09	622.52

Excessive "escrow" required by foreclosure proceedings on May 23. $ 468.95

Further, the mortgagee claims that only the mortgagor executed the mortgage; that a mortgagee does not execute the mortgage; and that the mortgagee is "bound to do nothing with the "escrow" amounts collected" from mortgagors. The morgagee does not covenant or promise anything under the mortgage document. This gives rise to the scope of a defense of illegality under the Sherman and Clayton Act, 15 USCA 1 and 2, et seq., (sections 1-7 and 12-27), for the reason that this is a mass mortgage contract in wide-spread use throughout the entire United States. (See, Contract and Note, Appendix BB and CC herein.) In fact, it is unlikely that a mortgage loan may be obtained unless the mortgagor agrees to the "condition precendent" of paying the "escrow" as mandated by the mortgagee.

When the mortgagee-Metro refused to

accept and/or credit mortgagor-Cramer with her timely and current payments of May, June and July (for principal and interest) after publishing the "Notice of Mortgage Sale" commencing May 23rd, prior to the sale date of August 20th specified in said publication, on August 12, 1968, "mortgagor-Cramer" in propria persona, filed a Complaint, with summons issued, in the Wayne County Circuit Court, Case No. 115-792, and obtained an Order To Show Cause With Temporary Restraining Order enjoining the mortgagee-Metropolitan from pursuing the foreclosure action. The defendants-Metropolitan and their officers were served on said date of August 12th. MCLA 600.3208; MSA 27A.3208 required publication for a specified 12 successive weeks. The twelfth week ended on August 15th. Where the defendants-mortgagee were served on August 12th and enjoined, this meant that the publication was in effect for less than the 12

successive weeks required by statute. The temporary enjoining Order had to count for something, and the defendants-mortgagee did not comply with statutory provisions as to the Foreclosure by Advertisement.

The first court hearing was scheduled for August 16, 1968, on the Order to Show Cause with Temporary Restraining Order, and Why a Preliminary Injunctive Order should not issue. The Wayne County Circuit Court, Thomas J. Murphy, J., on said date of August 16th (where both parties had appeared for said hearing) would not allow mortgagor-Cramer to proceed without a lawyer. Said judge yelled at "Cramer" to hire a lawyer, setting a continuance hearing-date to August 23, 1968. On August 20th "Cramer" hired attorney-Abel Selburn, and on August 23rd there was no hearing, but said Judge Murphy requested attorney-Abel Selburn to go to the Metropolitan offices to "audit" their books, and the hearing was reset for September 6, 1968. On Sat-

urday morning, August 24, 1968, beginning at approximately 9:00 A.M., "Cramer" and attorney-Selburn were at Metropolitan's offices, where for approximately 2 hours attorney-Selburn drank coffee, was given a tour through the Metropolitan offices, admired their equipment, talked to one John C. Denyer who handed to attorney-Selburn an adding-machine-tape about six (6) inches in length consisting of unexplained figures, and attorney-Selburn and "Cramer" left Metro's offices. No books and no accounts were requested by attorney-Selburn; none were produced or offered. "Cramer" has been a bookkeeper-accountant for approximately 40 years, (she is 61 years of age now) and she is and wal well acquainted with all procedures for a proper "audit."

At the hearing on September 6th, only John C. Denyer (for Metro) was permitted to testify. No exhibits and no identifications were presented and/or none were entered into the hearing record. The balance of the

hearing consisted of colloquy of the two (2) lawyers and with the said Judge (Murphy) scrambling over some unidentified figures. The Court would not permit "Cramer" to present her figures as to the mortgage-loan account, saying "I don't want to hear anymore about it. The injunction may be dismissed and they can proceed with the foreclosure."

On September 23, 1968 the attorney (Michael Doelle) for Metropolitan mailed a notice and the proposed "Order Dissolving Temporary Restraining Order" to attorney-Selburn, setting the date for entry of said Order on September 27, 1968 (without "Cramer's" knowledge). Attorney-Selburn did not show up in court for said entry of said Order, unknown to Cramer at the time, and no proof of service was filed. A Sheriff's sale of said property was held on October 1, 1968, three (3) days after the entry of said Order of September 27th,

contravening numerous statutes, among which, in violation of MCLA 600.3105; MSA 27A.3105; which required "after a judgment has been rendered * * * no separate proceeding shall be had for the recovery of the debt secured by the mortgage, or any part of it, unless authorized by the court." The Order of September 27, 1968, did not authorize any Sheriff's sale to take place on October 1, 1968, or any date or time. Further, where the attorneys for Metropolitan claimed the Order of September 27th to be an "adjudication" of default in her mortgage, the sale of said realty contravened MCLA 600.6052 (1) and (2); MSA 27A.6052 et seq., requiring that notices be displayed in 3 public places where the real estate is to be sold at least 6 weeks prior to the sale, and notices posted in 3 public places in the township or city in which the premises are located; with copy of said notice published once each week for 6 successive weeks prior

to the sale. There are not 6 weeks (and never will be) in between September 27 and October 1. No notices were posted. The Sheriff's sale of October 1, 1968, was unauthorized and in violation of the "judgment" entered on September 27, 1968. Alternatively, the so-called "judgment" as a finding of default in the mortgage, dated September 27, 1968, should be vacated, voided or nullified as false, and fraudulently obtained, and where State action is involved, in the ab sence of a due process hearing where no identifications were submitted at the one and only hearing of September 6th, prior to the entry of said "judgment" of September 27, 1968, and no evidence was submitted to support or substantiate a so-called alleged "deficiency" and/or a "default" in the mortgage. Neither attorney-Selburn and/or attorney-Counard, whom Cramer hired, sought any remedy and/or to vacate, void or annul the fraudulently obtained and executed Order of September 27, 1968, and which said

Sheriff's sale of October 1, 1968, constituted a fraudulent sale of "Cramer's" property. There is no time limit on attacking a void or voidable Order.

The above matters "Cramer" became aware ot, among many other irregularites, after the rendering of the Michigan Supreme Court decision of October 6, 1977, where it specifically states: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." (emphasis added) See, Cramer v Metropolitan Savings and Loan, et al, 401 Mich 252, at Appendix AA herein.

In the interim, where attorney-Selburn required "Cramer" to make several intermittant trips to his office to pay him more money, and also attorney-Selburn had furnished copies of pleadings to "Cramer" which he claimed he had prepared and filed in the Court records, subsequently, in about March 1970 "Cramer" examined the court file and

and found no pleadings filed by attorney-Selburn, and she determined also that the defendants-Metropolitan were never served with any pleadings as prepared by attorney-Selburn. (Also, in the interim, "Cramer" redeemed her property from the fraudulent Sheriff's sale of October 1, 1968, on June 5, 1969, after great difficulty, to save her property. At that time the increased market-value was about $35,000.00; "Cramer" had made considerable improvements on said property from the time of purchase.)

Attorney-Selburn had abandoned the case in fraud of his client-Cramer.

Then, "Cramer" fired attorney-Selburn (about March 1970) and further, filed more pleadings, in pro per, in the Wayne County Circuit Court, among which was a motion for leave to amend Complaint, and the Defendants-Metropolitan were served. The successor Judge (Edward F. Bell), where Judge Murphy was now deceased, would not permit "Cramer"

to file her Second Amended Complaint, and forced her to hire another lawyer. In about April or May 1970, "Cramer" hired attorney-Allen Counard, who also motioned the court for leave to file Second Amended Complaint, which was denied; Defendants-Metropolitan were granted a Summary Judgment dismissing the matter on the grounds of "res judicata," based upon the Order entered by Thomas J. Murphy, J., as a finding of default in the mortgage. (and where "Cramer" was not permitted to be heard.)

Attorney-Allen Counard took the matter on appeal, in the Michigan Court of Appeals, but ignoring the Order of September 27th signed by Judge Murphy, where the case is reported at 34 Mich App 638, and the appellate court said "Mrs. Cramer's evidence was not heard." and reversing "res judicata" and remanding to the Wayne Circuit Court.

However, subsequently, attorney-Allen

Counard continued to ignore the Order dated September 27, 1968 and which the defendants-Metropolitan's attorneys still claimed "res judicata" on the basis of said Order as a "finding of default" in her mortgage.

Attorney-Allen Counard continued managing the case (on behalf of "Cramer" ??) for approximately a two-year period, and always continued to ignore the Order of Sept. 27th which was fraudulently obtained by the defendant-attorneys for Metropolitan. Attorney-Allen Counard had prepared and filed a Second Amended Complaint consisting of 6 counts against mortgagee-Metropolitan, to wit:

I - Breach of Contract
II - Abuse of Process
III - Libel and Slander
IV - Breach of Fiduciary Relationship
V - Invasion of Privacy
VI - Intentional Infliction of Emotional Distress

In about August 1971, attorney-Counard filed a ready for pre-trial certificate, and subsequently also filed a Motion to Strike defendants affirmative defenses as

to "adjudged in default in her mortgage," among other things, pertaining to said pre-trial matters. The Court (still another Judge, Benjamin Burdick) granted the motion, striking the word "adjudged" from defendants affirmative defenses in their pre-trial statement. In October 1971, the Court issued its Summary of Pre-trial Conference, saying, in part: "This is a suit to set aside a foreclosure." and "settlement seems impossible at this time."

In about February 1972, attorney-Counard filed a motion for summary judgment (on behalf of client-Cramer) and where there was no cross motion by the defendants-Metropolitan, the court granted the summary judgment of dismissal to the defendants-Metropolitan, dismissing all six (6) counts of plaintiff-Cramer's complaint, as prepared by Attorney-Counard.

In about March 1972, "Cramer" fired

attorney-Counard, and subsequently, she lodged the second appeal, in pro per, in the Michigan Court of Appeals where the said court rendered an unpublished opinion, in May 1973, affirming dismissal of all but Count IV (Breach of Fiduciary Duty) of plaintiff-Cramer's Complaint, as prepared by attorney-Counard.

In the interim, "Cramer" had paid the referral fee to the Detroit Bar Association and where they kept "Cramer's" name on file for a period of about two years attempting to find an attorney to represent "Cramer" in this matter. In 1974, the Detroit Bar Association wrote "Cramer" a letter saying they were "unable to find an attorney" to handle her legal matters.

In August of 1973, Wayne Circuit Court Judge John R. Kirwan, presiding, a jury trial was held on Count IV only, where "Cramer" representing herself, was prohibited from mentioning the very word "foreclosure" and anything related, remotely

or otherwise, as to the "foreclosure." The jury found Defendants-Metropolitan "not guilty" and a judgment of "no cause of action" was entered by the court in Sept. 1973.

Proceeding in propria persona, "Cramer" lodged the third appeal in the Michigan Court of Appeals, who again rendered an unpublished opinion in June 1975, affirming the lower court.

Then, "Cramer" timely made application to the Michigan Supreme Court for leave to appeal, which was granted, and subsequently, the Michigan Supreme Court rendered its decision (based upon false facts), dated October 6, 1977, and reported at 401 Mich 252. Two rehearings were denied.

(Petitioner-Cramer incorporates by reference herein her previous Petition for Writ of Certiorari timely filed in the United States Supreme Court on April 27, 1978, Docket No. 77-1558, which was denied on June 12, 1978.)

On July 14, 1978, "Cramer" commenced a new action on this matter in the Wayne County Circuit Court, and taking it on appeal to the Michigan Supreme Court seeking reversal, voiding or correcting that court's decision of October 6, 1977, reported at 401 Mich 252, on the basis of fraud having been perpetrated upon the court. The court denied "Cramer's" application for leave to appeal, denied subsequent motions for reconsideration and the last Order issued by the Michigan Supreme Court (for establishing jurisdiction) is dated April 3, 1980.

In the interim, on July 17, 1979, "Cramer" sought "removal" of the entire State case in the Federal District Court, claiming factually to be "the defendant" in a wrongful foreclosure which was initiated by "Plaintiff-mortgagee" who utilized the Foreclosure by Advertisement" statute as a hostile process on their federal cause of action that they are required by federal regulations

to require "escrow," and that "Cramer" was denied a choice of forum, in defense of the wrongful foreclosure action. Also, simultaneously, "Cramer" filed an "original" proceedings Complaint for Declaratory Judgment, among other matters, and adding indispensable parties to the suit, among which, the first and third attorney "Cramer" had hired, the Federal Home Loan Bank Board and the members of the Michigan Supreme Court. "Cramer" also sought injunctive relief against the Michigan Supreme Court as to their condoning fraud, among other things.

Pleadings (mostly unresponsive) were filed by all of the defendants and co-defendants in the federal court action, on jurisdictional issues. On January 17, 1980, the Federal District Court issued its "Order of Dismissal In Part and Order of Remand In Part" without opinion. (See, Petitioner's Appendix, Volume I and II, filed herein.)

Proceeding timely, in propria persona, (for the reasons that she cannot find an honest and competent lawyer or attorney, even though she has adequate funds to pay for same, to handle this case) "Cramer" then filed her Notice of Appeal in the United States Court of Appeals, Sixth Circuit, where on two separate motions to dismiss (by the Federal Home Loan Bank Board and by the attorneys for Co-Defendant-Allen Counard) that court issued its Order dated May 5, 1980, without opinion, cutting off litigation, and contravening Federal Rales of Appellate Procedure, Rules 26(a) and (c), in total violation of its Local Rules of the Sixth Circuit, Rules 8 and 9, and where a motion to affirm is not permitted, and prior to the date of May 20, 1980, where by extended time granted Appellant-Cramer was to have been permitted to file her brief on appeal in the said United States Court of Appeals, Sixth Circuit, and

having been disallowed subsequently to file her brief, in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

The Michigan State courts, the Federal District Court and the United States Court of Appeals, Sixth Circuit, have no eyes to see and no ears to hear. The members of the Michigan Supreme Court are mentally disabled to render decisions, as exemplified in that reported at 401 Mich 252, where, in fact, they have decided that a foreclosure on real property is permitted on "escrow" funds with which the mortgagee is "bound to do nothing." Further, the Michigan Supreme Court considered only partial of two (2) paragraphs of the mortgage covenant and agreement, ignoring the other paragraphs and ignoring the mortgage note terms, in violation of the cardinal rule where the entire mortgage covenant and agreement must be considered to arrive at a proper interpretation of same.

When the mortgage contract is read in its entirety, it prohibits, inhibits, restricts, prevents, and precludes a mortgagor from complying with governmental laws such as paying taxes and insurances to protect the security of the real property mortgaged, while requiring the said mortgagor to pay "escrow" moneys to the mortgagee who is "bound to do nothing" with the said "escrow" moneys so collected.

"Cramer" wanted to pay her own liabilities of taxes, insurance and other assessments which may have become due on said real property, and for the main reason (among others) that the mortgagee was failing and neglecting to pay these liabilities when due, jeopardizing the security of "Cramer's" property, and allowing said taxes and insurance to become seriously delinquent.

By the mortgagee-Metropolitan utilizing the Foreclosure by Advertisement proceedings, and where other lending institutions, generally, by their policy, will not pick-up

on another's foreclosure, it certainly appears that lending institutions through their attorneys have a conspiratorial-racket going on so that mortgagor's are boxed-in with the likelihood that the said mortgagor will lose the property. Attorney-Selburn, whom "Cramer" hired, whom "Cramer" was forced to hire when the Court would not permit "Cramer" to proceed without a lawyer initially, did absolutely nothing to prevent the wrongful foreclosure, although there were many and various remedies which could have been sought to protect "Cramer's" interests, where the attorneys for Metro-politan flagrantly violated various statutory provisions (which "Cramer" became aware of only after the Michigan Supreme Court decision rendered dated October 6, 1977). Attorney-Selburn simply sat back and did nothing expecting "Cramer" to lose her property where it appeared that she would not be able to redeem from the Sheriff's sale.

This conspiratorial-racket is further enhanced, for the benefit of the attorneys where apparently they work together with the lending institution-attorneys, and by the misconduct, negligence, malpractice, fraud, concealment and deceit of the attorney whom the mortgagor hires, the plain and simple possibility and probability is that the attorney will cause the mortgagor to lose the property.

Then, the next attorney whom "Cramer" hired, attorney-Allen Counard vœered-up and concealed the misconduct, malpractice, negligence and fraud and deceit of attorney-Selburn. Attorney-Counard sought no remedy to properly remove the so-called "adjudication of default" which the attorneys for defendants-Metropolitan still claim to be "res judicata".

Subsequently, the third attorney (McFadden) whom "Cramer" hired, was ready, willing and able to cover-up for the negligence, misconduct, malpractice, fraud, concealment and

deceit of the previous two attorneys. Underneath the cool and calm exterior of a lawyer is a poisonous snake ready to exploit and victimize his own client. Lawyer's in private practice are by no means guardians of the people's rights, and the opposite is true since they work together with their colleagues where all that matters is the color of money for the attorneys' pockets. Often, the clients on both sides get ripped-off by their own attorneys; and, sometimes, even the just may be a participant in the attorneys' rackets. It appears there is no adversary system of law when the attorneys on both sides pocket their winnings, while the clients on both sides are the losers. The lawyers, generally speaking, are just plain dishonest. They work their schemes, strategy (or strategem), rackets and angles, victimizing and exploiting their own clients to the lawyers' advantages. The client hasn't got a chance to avoid the exploita-

tion and victimization.

In retrospect, in this instant case, when the judges forced "Cramer" to hire a lawyer (or lawyers) it was equivalent to pushing her into a snake-pit.

"Cramer" herein does not even pretend to have the knowledge and expertise of a lawyer, which is obvious, but it appears to her that if the mortgagee-Metropolitan had voluntarily adhered to the proper tuiliza-tion of the mortgagor's "escrow " funds there would have been no foreclosure and "Cramer" would not have had to seek any remedy from the courts, and therefrom "Cramer" would not have been forced to hire lawyers, and therefrom there would not have been the importance of the constitutional question involved, under the provisions and limitations of the Fourteenth Amendment to the United States Constitution. The Federal question arises as to the State's enforcement of the restrictive covenant, where the State has put its sanction behind

the covenant, and has to that extent punished "Cramer" for wanting to pay her own liabilities of taxes and insurances where mortgagee-Metropolitan was failing and neglecting to do so with the "escrow" moneys collected.

Petitioner-Cramer has never had a day in court to prove that there was no basis for the foreclosure, a denial of due process and equal protection of the law, in violation of the Fourteenth Amendment to the United States Constitution.

* * * * *

POINT I

In determining whether there is a significantly or sufficiently close nexus between the State and the challenged action of a foreclosure based upon "escrow" moneys solely, presents questions relating to the validity of the enforcement of a private agreement (a mass mortgage contract) which

has for its purpose and intent a monopolizing as to the collection of said "escrow" moneys impliedly, but unenforceable, for the payment of taxes, insurance and other assessments which may become due on said real property mortgaged. The mortgage contract, when read in its entirety, restricts, prohibits, inhibits, precludes and/or prevents a mortgagor from paying her own liabilities with her own money, Further, the mortgagee (banking and/or lending institution) does not signe the contract. Only the mortgagor signs. The mortgagee who requires the "escrow" moneys claims they are "bound to do nothing" with said "escrow" funds, and by investing the same realizes a gross profit.

The Michigan Supreme Court rendered its decision (reported at 401 Mich 252) which enforces the payment of said "escrow" moneys, or that the mortgagor is to suffer punishment by foreclosure and loss of the property and equity in said property, inflicted by

the interpretation of the Michigan Foreclosure by Advertisement Statute, MCLA 600.3201 et seq., MSA 27A.3201 et seq., by judicial officers in their official capacities.

In the instant case, all the mortgagor wanted was to pay her own taxes and insurance to be secure in that knowledge that her own liabilities would be met promptly, because the mortgagee had failed and neglected, repeatedly, to pay taxes and/or insurance on said mortgaged property with the "escrow" moneys as deposited by the mortgagor. Further, mortgagee refused to furnish receipts and/or to properly account for any or all disburse-ments of said mortgagor's "escrow" moneys.

Where the instant mass mortgage contract is a restrictive covenant, and between private parties as mortgagor and mortgagee, an analagous situation in the application of common-law rules is enunciated by this

U. S. Supreme Court in Shelley v Kraemer (1948) 334 US 1, 63 S Ct 836, where the court held that the "action of state courts and of judicial officers in their official capacities is to be regarded as action of the state within the Fourteenth Amendment" and that by enforceing the restrictive agreements, the States deny the equal protection of the law and that, therefore, the action of the state courts cannot stand.

POINT II

The terms of the mortgage (promissory) note allowed for a 15-day forbearance or waiver period for the current monthly install-ment of principal and interest. Petitioner's (mortgagor-Cramer's) May 15th payment was made on May 29th, within the said 15-day period where the mortgagee had elected the option of "After the 30th add late charge" as imprinted on each and every monthly installment payment card (as furnished by mortgagee to mortgagor-Cramer).

However, in hostile retaliation to mortgagor's request that she be permitted to pay her own obligations for taxes and insurance rather than in "escrow" for mortgagee to mishandle, the mortgagee-Metropolitan Federal Savings and Loan Association initiated foreclosure proceedings on/or about May 16th where the first insertion of publication appeared in the Detroit Legal News on May 23rd, and said mortgagee refused to credit mortgagor's current May 15th payment made on May 29th, "on account of the foreclosure." Mortgagor-Cramer also had objected to and disputed the "excessive escrow" required by said mortgagee, which during the 12-month period would have resulted in almost double the amounts needed to pay the current annual liabilities of taxes and insurance on the said real property mortgaged. The said 15-day forbearance period, where the said mortgagee had agreed that no penalty or no late charge would be applicable, is an intentional relinquishment of any act

by the mortgagee, elected by the mortgagee, or a waiver. The federal courts have held that the partaking of the principle of an election of the waiver needs no consideration and cannot be retracted. American Locomotive Co v Chemical Research Corp., 1949, 171 F2d 115, cert den 69 S Ct 515, 336 US 909, 93 L Ed 1074; American Locomotive Co v Gyron Process Co., 69 S Ct 515, 336 US 909, 93 L Ed 1074.

POINT III

The mortgagee-Metropolitan Savings and Loan Association assert they are "bound to do nothing" with the "escrow" moneys they require as terms and conditions of the mortgage-loan on real property purchased by mortgagors. This Court has said that "the illegal character of the agreement is founded, not alone upon the fact that it tends to lessen competition, but also upon the fact of the commission of a fraud * * * in combining their interests and concealing

the same, * * * " McMullen v Hoffman, 174 U.S. 639. (1899) 43 L Ed 1117, 19 S Ct 839, where the authorities are reviewed and the whole subject carefully examined, the court said, "The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract," citing many English and American Cases. "The court refuses to enforce such a contract, and it permits defendant to set up its illegality, not out of any regard for the defendant who sets it up, but only on account of the public interest. * * * and it is only allowed for public considerations and in order the better to secure the public against dishonest transactions. To refuse to grant either party to an illegal contract judicial aid for the enforcement of his alleged rights under it temds strongly toward reducing the number of such transactions to a minimum. * * * "

In some form or another, where the

mortgagee-Metropolitan asserts "we did not sign the contract. We are bound to do nothing" with the "escrow" moneys required by said mortgagee, the real nature of the transaction is disguised. In the leading case on Monopolies, Continental Wall Paper Company v Louis Voight & Sons Company, 212 US 227, (1909) 29 S Ct 29 S Ct 280, in Justice Holmes dissenting opinion (with three other justices concurring) in speaking of persons being compelled to pay that which is unreasonable in order to get what is needed, is the going to an act in furtherance of the unlawful purpose of the trust, "But that knowledge makes no difference, because the policy of not furthering the purposes of the trust is less important than the policy of preventing people from getting other people's property for nothing * * * . (emphasis added) Courts and legislation sometimes have recognized that the so-called freedom to contract or not may be

made illusory by the economic situation of one of the parties." Citing: Schlemmer v Buffalo, R. & P.R.Co., 205 US 1, 12, 51 L. ed 681, 686, 27 Sup Ct. Rep. 407.

On the other hand, in the instance of a unilateral restrictive covenant, in which the mortgagor has been coerced into as a "condition precedent" to obtaining the mortgage loan (and which is occurring by volume, overwhelmingly, in the modern-day mortgage marketing by banks and thrift lending institutions, which enables persons of moderate means to purchase and own property) there must be some common-sense remedy afforded by the courts to the mortgagor in guarding against the unscrupulousness of the mortgagee's long-term demands and unreasonableness, whereby a mortgagor would be permitted to protect herself against the unscrupulousness of the mortgagee, without being damaged by the foreclosure sanctioned by the court, or

perhaps even to the point of forfeiture of her property where redemption might not have been possible. Generally, one lending institution will not pick-up on another's foreclosure, which squeezes the mortgagor into a corner, at the mercy of the unscrupulous-Simon-Legree-mortgagee who is also failing and neglecting to utilize the said "escrow" moneys for the purposes intended, and is profitting by self-dealing with other people's money (the morgagor's "escrow" funds) where the mortgagor get nothing. In Shelley v Kraemer, supra, it was not the covenants which the court struck down but judicial enforcement of them, and that such judicial sction of enforcement was state action and constituted a denial of "equal protection," contravening the Fourteenth Amendment. Barrows v Jackson, 346 US 249.

POINT IV

By statutory provisions of the Michigan

Foreclosure by Advertisement procedures, the mortgagee is held to strict compliance. (But, who will take issue with or challange whether the mortgagee complied with statutory provisions? The lawyers this mortgagor hired didn't and wouldn't. What was their motive for purposely being negligent?) Primarily, the courts have held that there would be little or no reason for a foreclosure unless there was a "default in the indebtedness." In the instant case, there was no default in the indebtedness. The mortgagee utilized the foreclosure by advertisement in the May, in a current-month's payment period, to foreclose on "escrow" moneys, and in an excessive amount, $401.03, which could not have been properly utilized by the mortgagee until at least two (2) months later, in July, when $101.33 was assessed and billed for taxes. Nothing else was due or unpaid. (Mortgagor-Cramer paid the said July taxes of $101.33 direct-

ly, after the foreclosure was initiated by the mortgagee. Cramer's diligence and conscientiousness in paying her own taxes infuriated the mortgagee-Metropolitan people even more, and to the extent where they prevented her from paying her own taxes in December by obtaining the billing from the taxing authorities, Then, the taxing authorities would not permit Cramer to pay her own taxes, directly, because she could not produce the billing for same.)

In August, by commencing a suit in the Wayne County Circuit Court, "Cramer" obtained an "Order to Show Cause Why a Preliminary Injunction Should not Issue, With Temporary Restraining Order," and the defendants-Metropolitan were served on August 12th, which disrupted the required 12 successive weeks of publications required by Michigan statutory provisions spelled out in MCLA 600.3208; MSA 27A.3208. The temporary enjoining Order had to count for something, and where a full 84 days was required

for an effective 12 successive weeks of publication, the publication was effective for only 81 days, in contravention of statutory provisions.

Further, on September 27th, by the court dissolving the temporary restraining order and the defendants-mortgagee effecting the Sheriff's Sale on October 1st (3 days later) the Sheriff's Sale was in violation of MCLA 600.3105; MSA 27A.3105 which required "after a judgment has been rendered * * * no separate proceeding shall be had for the recovery of the debt secured by the mortgage, or any part of it, unless authorized by the court." The dissolution of the temporary restraining order, which the attorneys for defendants-Mortgagee assert was an "adjudication" of the court did not authorize any Sheriff's Sale or any other separate proceeding for the recovery of the debt secured. Further, the Sheriff's Sale of said realty contravened MCLA 600.

6052 (1) and (2); MSA 27A.6052 et seq., requiring that notices be displayed in 3 public places where the real estate is to be sold at least 6 weeks prior to the sale, and notices posted in 3 public places in the township or city in which the premises are located; with copy of said notice published once each week for 6 successive weeks prior to the sale. There are not 6 weeks (and never will be) in between September 27th and October 1st. No notices were posted. The Sheriff's Sale of October 1st, was unauthorized and in violation of the "judgment" entered on September 27th, and contravening statutory requirements and provisions.

The Sheriff's Sale of October 1st was held in rughless violation of specific statutory requirements, in contravention of the provisions and limitations of the Fourteenth Amendment to the United States Constitution. The Sheriff's Sale was illegal, and should be vacated or voided. Further,

the redemption through the Register of Deeds Office was illegal and should be vacated, voided, annulled, or corrected, being in specific violation of MCLA 600.3105; MSA 27A.3105 for the reason that the court did not authorize any separate proceeding for the recovery of the debt secured by the mortgage, or any part of it. (The lawyer I hired when I was forced to hire a lawyer, was a co-conspirator; I was supposed to lose my property, for the vulture-lawyers to benefit by.)

POINT V

At the first hearing on the "Order to Show Cause" on August 16th, the Court yelled at "Cramer" to hire a lawyer, and would not allow her to proceed unless she hired a lawyer. The Court set a continuance hearing-date of August 23rd. Frightened by the manner and conduct of the Judge, "Cramer" hired crooked-attorney-Abel Selburn, and where there was no hearing on August 23rd, the court set another continuance hearing-

date of September 6th, while in the interim attorney-Abel Selburn was to "audit" the Metropolitan books as to the foreclosure on "Cramer's" property. There was no such "Audit", no books were requested or produced; no records by Metropolitan were offered and attorney-Selburn requested none; then, attorney-Selburn was given only an adding-machine-tape, about 6 inches in length, with unidentified and unidentifiable figures on it.

The one and only hearing on September 6th, where only John C. Denyer for defendant-Metro was permitted to testify, and the colloquy of two lawyers and the judge scrambling, orally, over some figures, and where no records, no exhibits, no identifications were entered into the court record, the Judge (Thomas J. Murphy) said "go ahead with the foreclosure." Mrs. Cramer's evidence was not heard. 34 Mich App 638. "Cramer's" evidence has never been heard to date; never permitted to be heard. That is the reason for hiring a lawyer.

The lawyers "Cramer" hired, because of the insistence of the Court, took "Cramer's" money and engaged themselves in malpractice, fraud, concealment, deceit, and in camaraderie with the attorneys for defendants-Metropolitan, sought absolutely no remedy to prevent the wrongful foreclosure (1st attorney-Abel Selburn); sought absolutely no remedy to remove the fraudulently claimed adjudication of "default" in his mortgage, admitted to a "deficiency" when there was no deficiency in her "escrow" account (instead, there was a credit balance in escrow which the Sheriff's Bidding Statement showed as applied in reduction of the principal balance), failed and neglected to produce and/or take testimony in Court, on anything, including the Sheriff's Bidding Statement, asserted that the mortgage covenant was a "mutual covenant" with considerations flowing to the mortgagor (erroneously), among other things too numerous to mention, (2nd attorney-Allen Counard); and while the 2nd attor-

ney covered-up for the 1st attorney's malpractice, then the 3rd attorney-McFadden whom "Cramer" hired in February 1979 was obviously bent on pursuing a course of covering-up for the other two attorneys in holy malpractice, also asserting that the mortgage covenant is a "mutual covenant". These were all invidiously discriminatory practices, in conflict of interest, against "Cramer" as their client, and which caused the denial of due process of law, denial of equal protection of the laws, by obstructing justice in perversion of camaraderie, against their own client, and also for the reasons that lawyers do not want to suffer ostracizing by other lawyers.

In Faretta v California (Slip Opinion) 1975, No. 73-5772, On Writ of Certiorari to the Court of Appeals of California for the Second Appellate District, the U. S. Supreme Court reversed and vacated the judgment and remanded for further proceed-

ings on the grounds that Faretta was forced to accept against his will a state-appointed public defender and that the California courts deprived him (Faretta) of his constitutional right to conduct his own defense. The U. S. Supreme Court held that the Sixth Amendment (right to counsel) as made applicable to the States by the Fourteenth guarantees that a defendant in a state criminal trial has an independent constituional right of self-representation and that he may proceed without counsel.

The Michigan Constitution of 1963 (and priorly) provides a guaranteed right of self-representation, Article 1, Section 13. Michigan statutory provisions, MCLA 600.1430; MSA 27A.1430, provides that:

> "Every person of full age and sound mind, may prosecute or defend civil actions in any court by an attorney, or may, at his election, prosecute or defend civil actions in person. No person shall be permitted to prosecute or defend any civil action in person, when he has an attorney in such case.
> P.A. 1961, No. 236, sec. 1430, eff. January 1, 1963.

Mr. Chief Justice Burger, with whom Justices Blackmun and Rehnquist joined, dissenting in Faretta v California, supra, commented "If there is any truth to the old proverb that "one who is his own lawyer has a fool for a client," the Court by its opinion * * * now bestows a constitutional right on one to make a fool of himself." However, the dissenters overlooked a more profound aspect of the horrendous, horrible, nightmarish experience in any litigation; that if one has the choice of what kind or degree of fool one may be by one's constitutional right, it is a far better choice to be one's own fool than being a fool by hiring a lawyer and being made a bigger fool of by the lawyer.

It hurts the litigant and/or client, plenty, whichever way you want to cut it. Financially, spiritually, psychologically, physically, etc. etc. See, A Sick Profession, 5 Tulsa L J 1 (Jan 1968) and where

Judge Warren E. Burger, in describing the state of the legal profession, commented and posited the following proposition:

> "(1) the legal profession as a whole has very poor standing;
>
> (2) there are many causes for this, some of them incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and
>
> (3) there is something we can and ought to do about this as the English bar and bench did a century ago.
>
> " * * * There is no single cause for what would be called the "bad image" of the legal profession. The total image is a stream into which many things are poured. The deportment and misconduct of some members of the bar pollute this stream and their bad manners contribute to the bad performance. * * * The title lawyers and real estate lawyers who engage in miscellaneous chicaneries to bilk home-owners are, of course, a large factor; and, with the enormous expansion in the building,

buying and selling of homes, thousands of Americans have been mistreated by this group and are properly resentful. * * * There are others. * * * "

"Cramer" herein offers her own old proverb: "The truth hurts, but the lies, malpractice, fraud and deceit of lawyers will kill you."

POINT VI

In the instant case, the "Order" of enforcement by foreclosure in the lower court was affirmed by the Michigan Supreme Court, reported at 401 Mich 252. The judicial action at every level of the State courts bears the clear and unmistakable imprimatur of the State. Only the mortgagor signs the covenant and agreement (the mass mortgage contract). The mortgagee does not sign the mortgage contract and asserts "we are bound to do nothing" with the "escrow" funds we require."

Therefore, the Michigan State courts have said, in effect, that the mortgagee may foreclose and accelerate the debt and for mortgagor's own moneys (in addition to the debt) when no taxes and no insurances are assessed, billed, due or unpaid, for mortgagee's self-dealing purposes, and the mortgagee is bound to do nothing with said mortgagor's "escrow" funds, and the mortgagee may take possession of the said real property when nothing is due and nothing is unpaid. The Michigan Supreme Court members are mentally disabled to render decisions.

In Shelley v Kraemer, supra, the court noted that "previous decisions of this court have established the proposition that judicial action is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common-law policy. * * * State action, as that phrase is

understoon for the purposes of the Fourteenth Amendment, refers to exertions of state power in all forms. And when the effect of that action is to deny rights subject to the protection of the Fourteenth Amendment, it is the obligation of this Court to enforce the constitutional commands."

POINT VII

The seemingly insignificant 'federal regulations" mortgagee-lending institutions rely on, and which expands into an enormous power, is found under Title 12, Code of Federal Regulations, 545.601, et seq., as promulgated under the authority of the Federal Home Loan Bank Board, provisions of which are as follows:

545.6 Real Estate loans.

545.6-1 Lending powers. Any Federal association may make the following types of loans on the security of first liens on improved real estate:

(a) Home or combination of homes and business property --

(1) Monthly installment loans; flexible payment loans.

* * * up to 75 percent of the value thereof, repayable monthly within 30 years or, if an insured or guaranteed loan, within the period acceptable to the insuring or guaranteeing agency. Provided, That when so authorized by the memebers of such an association, such loans may be made up to:

(i) 80 percent of the value, if the loan is not an insured or guaranteed loan;

(ii) The maximum percentage of the value acceptable to the insuring agency, if an insured loan;

(iii) 80 percent of the value, plus the amount guaranteed if a guaranteed loan.

* * *

(4) Loans in excess of 80 percent of value. The limitation of 80 percent set forth in (a) (1) (i) of this section shall be 90 percent in the case of any loan meeting the following requirements:

* * *

(iii) The loan Contract requires that in addition to interest and principal payments on the loan, the equivalent of one-twelfth of the estimated annual taxes and assessments on the real estate security be paid monthly in advance to the association;

* * * "

(emphasis added)

Therefore, no "escrow" is required on any insured or guaranteed loan. "Escrow" is required on a loan 90 percent of value, if the loan is not an insured or guaranteed loan. See, Petitioner's Appendix, Volume II, pages 550a and 551a, Letter (Exhibit A) from the Federal Home Loan Bank Board, Office of General Counsel.

In the instant case, the mortgage-loan was a "conventional" type, not an FHA or VA loan.

If the mortgagee-Metropolitan Federal Savings and Loan Association had followed the above-shown provisions, no "escrow" was required in the instant case, being a conventional mortgage privately insured by Mortgage Guaranty Insurance Corp. (MGIC)

POINT VIII

The attorneys for defendants-Metropolitan Federal Savings and Loan, have consistently claimed that the Order dated Sept-

ember 27, 1968, as dissolving the temporary restraining order, and as a finding of "default" in her mortgage is "res judicata." No "default" was shown in the one and only hearing of September 6, 1968, preceding the entry of said "Order" of September 27, 1968, No exhibits, no identifications were submitted and/or entered into the record. "Cramer's evidence was not heard." 34 Mich App 638. The attorneys (Selburn and Counard) "Cramer" hired never sought the proper remedy or to even challenge the defendants-attorneys assertions of "default" in her mortgage.

"Cramer" contends that said "Order" of September 27th was fraudulently obtained. In Grummons v Zollinger, D.C. (1964) 240 F Supp 63, affirmed 341 F 2d 464, the federal court of appeals held, "Principle of res judicata may not be invoked to sustain fraud and judgment obtained by fraud, or collusion, may not be used as basis for application of doctrine."

As the record will show, "Cramer" was badly represented by the attorneys she was forced to hire in this matter. "Res judicata" is an affirmative defense and burden of proof is on the party asserting it." Howard v Green, C.A. Ark. 1977, 555 F2d 178.

POINT IX

The Federal district court erred in 'remanding" the sought removal of the entire State case to the Federal courts. Where the State case was pending in the Michigan Supreme Court (No. 62249) until April 3, 1980, the Wayne County Circuit Court had no jurisdiction on said "remand in part" as Ordered on January 17, 1980. A "remand" can be effected only to the State court from "whence it came," or from which it was removed pursuant to section 1443, and shall be reviewable by appeal or otherwise. 28 USC 1447 (d). In Huffman

et al v Pursue, Ltd., 420 US 592, this court said,

> " * * * assuming, arguendo, that litigants are entitled to a federal forum for resolution of all federal issues, that entitlement is most appropriately asserted by a state litigant when he seeks to relitigate a federal issue adversely determined in completed state court proceedings."

The federal issue, pertinent to the whole of the case is whether state action is involved, as to the "foreclosure", as to being forced to hire lawyers, etcetera. Petitioner-Cramer herein, further, relies on Mitchum v Foster, 407 US 225, where this Court said, "Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law upon rights secured by the Constitution and law of the Nation. It is clear fro m the legislative debates surrounding passage of 1983's predecessor that the Act was intended to enforce the provisions of the Fourteenth Amendment

"against State action * * * whether that action be executive, legislative, or judicial." Ex parte Virginia, 100 US 339, 346 (emphasis added) Proponents of the legislation noted that state courts were being used to harass and injure individuals, either became the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights. * * * The very purpose of 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights - - to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative or judicial." Ex parte Virginia, 100 US, at 346.

Further, it is the established practice of the United States Supreme Court to sustain the jurisdiction of the federal courts to issue injunctions to protect

rights safeguarded by the Constitution, Philadelphia Co. v Stimson, 223 US 605; Hays v Seattle, 251 US 233; Pennoyer v McConnaughy, 140 US 1; City Railway Co v v Citizens Railroad Co., 166 US 557; City of Mitchell v Dakota Telephone Co., 246 US 396., and to restrain individual state officers from doing what the 14th Amendment forbids the State to do. Chicago, B & Q. R. Co. v Chicago, 166 US 226; see also Ex parte Virginia, 100 US 339.

"If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jursdiction." Bell v Hood, 327 US 678; Swafford v Templeton, 185 US 487; Binderup v Pathe Exchange, 263 US 291.

Your Petitioner (Cramer) has never had a day in court to prove that there was no basis for the foreclosure. The defendants-Metropolitan utilized the foreclosure by

advertisement procedure as a hostile process prior to the one-monthly payment of principal and interest only, without the "escrow", in retaliation to Cramer's justifiable and warranted complaints against the mortgagee-Metropolitan. Then, subsequently, the attorneys adopted "she refused to pay escrow" as their strategem, to victimize her and to exploit her, and in perpetrating a fraud upon the court.

CONCLUSION

This Court should grant certiorari because of the importance of the issues arising under the Fourteenth Amendment, and the Order of dismissal of the action should be reversed and ordered remanded for trial on the merits and/or for consideration of Petitioner-Cramer's case under the appropriate standards to be enunciated by this Court.

Respectfully submitted,

Virginia Cramer, Petitioner
In Propria Persona
27314 Clairview
Dearborn Hts., Mich 48127
Telephone: (313) 278-7286

APPENDIX AA

State of Michigan
In the Supreme Court

Virginia Cramer, Plaintiff-appellant
vs
Metropolitan Savings and Loan Association, et al Defendants-appellees

No. 57215
(dated Oct 6, 1977)
reported at: 401 Mich 252

Virginia Cramer brought an action to enjoin foreclosure of a mortgage and for damages - against Metropolitan Savings and Loan Association and its officers, alleging excessive escrow demands and mishandling of the escrow funds as a defense to the foreclosure. The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default. Plaintiff's motion to file an amended complaint was denied and Edward F Bell,J., granted the defendants summary judgment on the ground of res judicata. The Court of Appeals, Danhof, P.J., and McGregor and Levin, JJ., reversed in a per curiam decision (Docket No. 9619). 34 Mich App 638; 192 NW2d 50 (1971). Plaintiff filed an amended complaint of six counts which alleged wrongful foreclosure, and other wrongdoing, and Richard L. Hammer, J., granted summary judgment for Metropolitan. The Court of Appeals, T. M. Burns, P.J., and Admas and Bashara, JJ., affirmed as to five counts, but reversed as to the count alleging breach of fiduciary relationship (Docket No. 14149). A jury in Circuit Court, John R. Kirwan, J., found no cause of action

against the defendants on the allegation of a breach of a fiduciary duty. The Court of Appeals, R. B. Burns, P.J., and T. M. Burns and R. M. Maher, JJ., affirmed (Docket No. 18948). The plaintiff appeals.
Held:

1. The existence of a statute which permits a mortgagee to foreclose a mortgage by advertisement rather than by judicial process does not constitute state action under the Equal Protection Clauses of the Michigan and Federal Constitutions. Since the power of sale is an incident of the private right to contract, a mortgagee who exercises a foreclosure option is relying on a contract remedy, and not on a right created by statute.

2. The remedy for breach of a covenant is damages or an injunction, whereas the remedy for default on a condition subsequent is termination of the contract. The question whether a particular provision in a contract is a condition or a covenant depends in large part on the language of the contract, interpreted with the intent of the parties as the paramount consideration. Under the terms of the mortgage in the instant case, plaintiff failed to perform a covenant to pay monies into escrow, the performance of which was a condition of the contract. The remedy authorized by the mortgage was termination by foreclosure of the mortgage. This case does not involve a mere technical breach of the contract by the mortgagor, but a refusal to make the payments as agreed.

Affirmed.

Filed October 6, 1977 - No. 57215
STATE OF MICHIGAN SUPREME COURT

BEFORE THE ENTIRE BENCH (except Moody, J.)
KAVANAGH, C.J.

This appeal arises out of a mortgage foreclosure on plaintiff's property by the defendant after the latter accelerated the debt because of an alleged deficiency in plaintiff's "escrow" account. The parties have been before the Court of Appeals in this matter on three occasions, the last appeal to that Court resulting in an affirmance of a jury's verdict for defendant on a breach of fiduciary duty count brought by plaintiff.

This Court granted leave to consider plaintiff's allegations of error in all of the proceedings below.

In June, 1963, plaintiff executed a mortgage application to defendant Metropolitan Savings and Loan Association (hereinafter "Metropolitan") which then issued a "commitment letter", dated July 3, 1963, setting forth the conditions of the loan.

Pursuant to that commitment, plaintiff executed a promissory note secured by a mortgage delivered to defendant on July 29, 1963.

The mortgage included the following terms:

"Mortgagor covenants and agrees: * * *

"2. In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments levied or to be levied against said premises that will next

become due, (and) an installment of the premium or premiums that will next become due to renew the insurance on said premises (as hereinafter provided) * * * . The said installments shall be equal, respectively, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefore, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be hald by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single payment. If the sum so deposited shall not be sufficient to pay the taxes, assessments and premiums when the same become due, mortgagor agrees to forthwith pay to mortgagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefore, the excess shall be credited upon principal. * * *

"8. In the event of default in the payment of said indebtedness, or any part thereof, or in the performance of any of the covenants or conditions hereof, mortgagee may, without notice, at its option, declar the entire indebtedness secured hereby due, then or thereafter, as it may elect, regardless of the date of maturity and is hereby authorized and empowered to sell or cause to be sold said premises, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder, and all costs and charges of the sale (including the attorneys' fee provided

by statute), rendering any surplus moneys to mortgagor. The commencement of proceedings to foreclose this mortgage in any manner authorized by law shall be deemed an exercise of the above option." * * *

The parties also executed a "Loan Settlement Statement", which itemized the monthly payments as follows:

Principal and Interest	$103.81
Tax Escrow	22.25
Insurance Escrow	4.00
MGIC (Mortgage Guaranty Insurance Company) Premium	3.44
	$133.50

The mortgage note, in the amount of $16,500, provided for a monthly payment of $103.81, constituting principal and interest, and made no mention of any other amount for escrow or mortgage insurance premium.

For a period of time, plaintiff made timely payments, including escrow, and in fact, was well ahead of her repayment schedule for principal. There was a continuing dispute, however, over the escrow account, with plaintiff alleging that defendant had not paid her taxes and escrow premiums when due and that defendant was requiring excessive escrow payments.

Defendant admits that it allowed plaintiff's 1963-1964 taxes to become delinquent, but in 1965 paid the back taxes, including all penalties. Plaintiff finally stopped the escrow payments, and stated that she wished to make her tax and insurance payments directly. Plaintiff admits in her brief that she did not maintain a current escrow account.

On May 23, 1968, defendant instituted foreclosure proceedings by advertisement pursuant to MCLA 600.3201 et seq.; MSA 27A.3201 et seq., and paragraph 8 of the mortgage agreement. Defendants complied in all respects with the requirements of the statute.

Plaintiff obtained a temporary restraining order, which was subsequently dissolved after the court determined that plaintiff was in default of her mortgage. The property was sold at a sheriff's sale on October 1, 1968 and plaintiff redeemed the property on June 5, 1969.

Following several judicial proceedings, including an appeal to the Court of Appeals, (34 Mich App 638; 192 NW2d 50 (1971), plaintiff was allowed to file an amended complaint, which alleged breach of contract, abuse of process, libel, breach of fiduciary duty, invasion of privacy, and intentional infliction of emotional distress. Summary judgment was granted for defendant on March 27, 1972.

In an unpublished per curiam opinion (Docket No. 14149, released May 29, 1973), the Court of Appeals affirmed on all counts except that charging breach of fiduciary duty, which was remanded for trial. The subsequent jury trial on that issue resulted in a verdict for defendants, and judgment was entered September 21, 1973.

The Court of Appeals affirmed on June 2, 1975.

I

The appeal raises two questions which merit discussion. First, plaintiff questions the constitutionality of the Michigan

foreclosure by advertisement statute, which provides in part:

> "Every mortgage of real estate, containing therein a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner hereinafter specified."
> MCLA 600.3201, MSA 27A.3201.

> "To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure, it shall be requisite:
> "(1) That some default in a condition of such mortgage shall have occurred, by which the power to sell became operative * * * ."
> MCLA 600.3204, MSA 27A.3204

The essence of plaintiff's constitutional argument is that the foreclosure statute grants a mortgagee the power to terminate a mortgage relationship by use of procedures that are not in harmony with the requirements of the Fourteenth Amendment to the United States Constitution and Article 1, section 17 of the Michigan Constitution. Specifically, she claims that the Michigan foreclosure by advertisement statute, as applied, violated the due process clauses of the two constitutions in that it requires neither a notice of hearing, nor a hearing to establish the debt.

Plaintiff's argument rests upon the United States District Court's decision in Northrip v Federal National Mortgage Ass'n, 372 FSupp 594 (ED Mich, 1974).

There the court acknowledged that a due process question is raised only where there is state action, the test for which is whether or not the state has significantly involved itself in the challenged conduct. The Northrip court held that state action was present because the "statute encourages mortgagees to seek foreclosure by advertisement, rather than by judicial process * * * ." 372 FSupp 597.

The district court also ruled that while a power of sale may be deemed to waive the right to a due process hearing before foreclosure by advertisement, there was no such waiver in the case before it. The plaintiff had not "voluntarily, intelligently and knowingly" waived her due process rights because the power of sale did not include any terms of waiver, nor did it notify plaintiff of the procedure to be utilized in foreclosing upon her property.

The district court ultimately held that the statute, as applied, did not satisfy minimum due process requirements "because the process failed to provide an adequate opportunity to be heard before the taking of a significant property interest." 372 F Supp 599.

Plaintiff in her brief fails to note, however, that the lower court decision in Northrip was subsequently reversed. The Sixth Circuit Court of Appeals disavowed the state action analysis employed and the result reached by the district court. 527 F2d 23 (CA 6, 1975)

The Federal appellate court held that the existence of a statute which permitted a mortgagee to foreclose by advertisement rather than by judicial process did not

constitute state action.

Since "the power of sale is an incident of the private right to contract. Equitable Trust Co. v Barlum Realty Co. 294 Mich 167; 292 NW 691 (1940) ", a mortgagee who exercises a foreclosure option is relying on a contract remedy, and not on a right created by the statute. 527 F2d 26-27. Therefore, the state cannot be said to be significantly involved, through "encouragement", in the challenged conduct, and a due process question is consequently not presented.

Our own Court of Appeals in National Airport Corp v Wayne Bank, 73 Mich App 572; 252 NW2d 519 (1977), has recently adopted the Sixth Circuit's full and definitive analysis of the Michigan foreclosure by advertisement statute. We do likewise.

Accordingly, we hold that the plaintiff's instant claim of unconstitutionality under both the Michigan and Federal Constitutions fails for lack of the existence of state action.

II

We next consider whether or not plaintiff's refusal to make timely escrow payments for taxes and insurance constituted a "default * * * in any condition of (the) mortgage", allowing foreclosure by advertisement pursuant to MCLA 600.3201; MSA 27A.3201.

The mortgage provides that:

"Mortgagor covenants and agrees:

* * *

"2. In order more fully to protect

the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments - levied or to be levied against said premises that will next become due, (and) an installment of the premium or premiums that will next become due to renew the insurance on said premises * * * ."

Paragraph eight of the mortgage further provides that in the event of default "in the performance of any of the covenants or conditions hereof", mortgagee may accelerate the full indebtedness and sell the property pursuant to the statute.

It is plaintiff's argument that the above provisions in the mortgage constitute a covenant, the remedy for breach of which is an action for damages or an injunction.

Defendants, on the other hand, contend that paragraphs 2 and 8, when read together, make monthly payments into escrow a condition, and default thereon allows foreclosure by advertisement.

Commonly, a covenant is regarded as an assurance that something will be done in the future, while a condition is regarded as "a fact or event that affects legal relations; it is a cause of some change in those legal relations". 3A Corbin, Contracts, sections 627, 633. The remedy for breach of a covenant is damages or an injunction, whereas the remdy for default on a condition subsequent is termination of the contract. Capitol Land Co v Zorn, 134 Ind App 431, 433; 184 NE2d 152, 158 (1962); 17A CJS, Contracts, sections 339, 399.

The question whether a particular

provision in a contract is a covenant or, alternatively, a condition, does not admit of an absolute answer. Rather, the resolution of the issue depends in large part on the contract, with the intent of the parties being the paramount consideration, McIntosh v Groomes, 227 Mich 215; 198 NW 954 (1924)

Recognizing the parties' prerogative to provide for their own contract, we said in White v Burkhardt, 338 Mich 235, 239; 60 NW2d 925 (1953):

> "Foreclosure of mortgages by advertisement and sale has been in use in this State for about 100 years, and is well understood. Such statutory foreclosures whould not be set aside without some good reason therefor. Markoff v Tournier, 229 Mich 571, and Detroit Trust Co v Agozzinio, 280 Mich 402, 496. Statutory foreclosures are a matter of contract, authorized by the mortgagor, and ought not to be hampered by an unreasonably strict construction of the law. Lee v Clary, 38 Mich 223, and Peterson v Jacobs, 303 Mich 329, 335."

We are convinced that under the terms of the contract before us, plaintiff has defaulted on a condition. By refusing to pay monies into escrow, plaintiff failed to perform a covenant the performance of which was a condition of the contract. 3A Corbin, supra, sections 633, 635. Plaintiff agreed that Metropolitan would have the option of foreclosing pursuant to the statute if she did not perform her covenant. The remedy is concededly a harsh one, but "harshness or hardship alone will not defeat a foreclosure". Schechtman v Grobbel, 226 So 2d 1, 3 (Fla Dist Ct App, 1969)

Despite plaintiff's insistence to the contrary, this case does not involve a mere technical breach by the mortgagor as was present in Schechtman, supra. In that case the Florida District Court of Appeals refused to allow foreclosure where the mortgagor paid escrow monies to a bank rather than to the mortgagee, as required by the mortgage. The court emphasized that, even though the payment was made to the wrong institution, the escrow balance was at all times current and the security of the mortgage was never in jeopardy. Here plaintiff refused to make the payments.

We agree with the trial court and the Court of Appeals that the foreclosure was licit.

Affirmed. Costs to defendant.

THOMAS GILES KAVANAGH
CHARLES L. LEVIN
MARY S. COLEMAN
G. MENNEN WILLIAMS
JOHN W. FITZGERALD
JAMES L. RYAN

APPENDIX BB

THIS MORTGAGE, made this 29th day of July, 1963 between Virginia Cramer of the City of Detroit, County of Wayne, Michigan, mortgagor, and METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation existing under the Home Owner's Loan Act of 1933 of the United States of America, Mortgagee:

WITNESSETH: That mortgagor, for and in consideration of the sum of Sixteen Thousand Five Hundred and No/100 dollars ($16,500.00), the receipt whereof is hereby acknowledged,

and for the purpose of securing the re-payment of said sum, with interest, as hereinafter provided, and any additional sums which mortgagor (jointly or severally, if more than one joins herein) may now or hereafter owe mortgagee, for which this mortgage shall be a continuing security, and of securing the performance of the covenants and conditions hereafter contained, hereby mortgages and warrants unto mortgagee the premises situated in the City of Dearborn Heights, County of Wayne, Michigan, described as follows:

East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 Of Part Of The SW 1/4 of Sec. 6, T2SR10E, Dearborn Township WCM As Recorded in L80 P2 Wayne County Records.

Recorded: Aug 13, 1963 at
10:05 O'clock AM
BERNARD J. YOUNGBLOOD,
Register of Deeds
Wayne County 26, Michigan

together with all easements and rights of way now or hereafter used in connection therewith and all fixtures (which shall include all articles that are ever furnished by a landlord in letting or operating an unfurnished building which are now or shall hereafter be attached to said premises in any manner).

Mortgagor covenants and agrees:

1. To pay to mortgagee at its office in the City of Detroit, Michigan, the principal sum of Sixteen Thousand Five Hundred and No/100 dollars, ($16,500.00), with interest thereon, according to the terms of a promissory note bearing even date herewith execut-

ed by mortgagor to mortgagee, which matures on the 15th day of August 1988, and to pay when due any additional sums which mortgagor may now or hereafter owe mortgagee, as aforesaid.

2. In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments levied or to be levied against said premises, that will next become due, an installment of the premium or premiums that will next become due to renew the insurance on said premises (as hereinafter provided) and, if any life insurance is payable or assigned to mortgagee as additional security for said indebtedness, an installment of the premium or premiums that will next become due thereon. The said installments shall be equal, respectively, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be held by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single payment. If the sums so deposited shall not be sufficient to pay the taxes, assessments and premiums when the same become due, mortgagor agrees to forthwith pay to mortgagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefor, the excess shall be credited upon principal.

3. To keep all insurable property covered hereby insured against loss by fire and such other hazards as may be specified by mortgagee from time to time, in such amounts and for such periods as may be required by mortgagee, and to pay when due all premiums on any such insurance in the manner above provided. All insurance shall be carried in companies approved by mortgagee and the policies and renewals thereof shall be held by mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to mortgagee. Each insurance company concerned is hereby directed to make payment for such loss to mortgagee only, and the insurance proceeds, or any part thereof, may be applied by it upon any indebtedness secured hereby or to the restoration or repair of the property damaged, at its option, and any surplus shall be paid to mortgagor.

4. To pay when due all taxes, assessments and other charges which are now or shall hereafter be a lien against said premises, or any part thereof, and for which provision has not been made hereinbefore.

5. To keep all property covered hereby in good repair and condition, to comply promptly with all laws, ordinances, regulations or requirements of any governmental authority applicable hereto, and to abstain from the commission of waste.

6. Should any default be made in the covenants or conditions hereof, mortgagee may, without demand or notice, pay any taxes, assessments, premiums or liens required to be paid by mortgagor, make repairs, effect any insurance provided for herein, cause the abstract of title and tax histories of said premises to be

certified to date or procure new abstracts of title and tax histories in case none were furnished to it and procure title reports covering said premises, and the sums paid for any one or all of said purposes shall from the time of the payment thereof be due, with interest thereon at the rate of seven per centum (7%) per annum, and shall constitute a further lien upon said premises under this mortgage. In the event of foreclosure the abstract or abstracts of title shall become the property of mortgagee.

7. The failure of mortgagor to pay any taxes or assessments levied against said premises, or any insurance premiums upon policies of insurance covering said premises, in accordance with the terms hereof, shall constitute waste.

8. In the event of default in the payment of said indebtedness, or any part thereof, or in the performance of any of the covenants or conditions hereof, mortgagee may, without notice, at its option, declare the entire indebtedness secured hereby due, then or thereafter, as it may elect, regardless of the date of maturity and is hereby authorized and empowered to sell or cause to be sold said premises, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder, and all costs and charges of the sale (including the attorneys' fee provided by statute), rendering any surplus moneys to mortgagor. The commencement of proceedings to foreclose this mortgage in any manner authorized by law shall be deemed an exercise of the above option.

9. The covenants and conditions hereof shall bind, and the benefits and advantages thereof shall inure to, the respective heirs,

executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, this mortgage has been signed and sealed by mortgagor.

Signed, sealed and delivered
in the presence of:

/s/ Virginia Cramer (L.S.)

/s/ Frank E. Fike
/s/ Edward J. Gilroy

STATE OF MICHIGAN)
COUNTY OF WAYNE) SS.

On this 29th day of July, 1963, before me personally appeared Virginia Cramer to me known to be the persons described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

My Commission expires: 3-12-66

/s/ Edward J. Gilroy
Notary Public, Wayne
County, Michigan

STATE OF MICHIGAN)
COUNTY OF) SS.

On this _____ day of _____ 19 ____ before me appeared _____ and _____ to me personally known, who, being by me (severally and) duly sworn did say that he is (they are respectively) _____ and _____ of _____ (and that the seal affixed to said instrument is the corporate seal of said corporation) and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of said Directors;

and the said officer(s) acknowledged the said instrument to be the free act and deed of said corporation.

My Commission expires _____19__

_____

Notary Public _____ County, Michigan

APPENDIX CC

MORTGAGE NOTE - Loan No. 6326-MG
METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION

$16,500.00 Detroit, Michigan, July 29, 1963

FOR VALUE RECEIVED, the undersigned, jointly and severally, promise(s) to pay Metropolitan Federal Savings and Loan Association, or order, at its office in the City of Detroit, Michigan, the principal sum of Sixteen Thousand Five Hundred and No/100 Dollars ($16,500.00) with interest from date on any part thereof at any time unpaid at the rate of 5 & 3/4 per centum (Five & 3/4%) per annum while there is no default hereunder, or under the mortgage securing this note, and at the rate of seven per centum (7%) per annum during the period of any such default, as follows:

One Hundred Three and 81/100 Dollars ($103.81) on the 15th day of September, 1963, and a like sume on the 15th day of each calendar month thereafter until the entire indebtedness secured hereby has been paid in full.

In the event of default in any promise made in this note, or in the mortgage securing it, the holder of this note and said mortgage may, without notice, at its option declare the entire indebtedness evidenced

and secured thereby due and payable, then or thereafter, as said holder may elect, regardless of the date of maturity.

Protest, presentment, demand and notice of non-payment are hereby waived by every signor or endorser hereof.

The monthly payments herein provided for shall be applied first upon interest and the remainder upon principal.

Privilege is reserved to prepay, without premium or fee, the indebtedness in whole, or in an amount equal to one or more monthly payments on the principal that are next due on this note, on the 15th day of any month prior to maturity, provided that the monthly payment due on the said 15th day of the month shall have been paid.

At its option, in lieu of increasing the rate of interest as above provided during the period of any default, the Association may collect a "late charge" not to exceed an amount equal to four per centum (4%) of any installment which is not paid within fifteen (15) days from the due date thereof, to cover the extra expense involved in handling delinquent payments.

/s/ Virginia Cramer (L.S.)

This is to certify that this is the note described in and secured by mortgage of even date herewith and in the same principal amount as herein stated, and secured by real estate situated in Wayne County, State of Michigan.

Dated
July 29, 1963

/s/ Edward J. Gilroy
Notary Public

APPENDIX DD

United States District Court
Eastern District of Michigan
Southern Division

VIRGINIA CRAMER, Petitioner-Defendant (in wrongful foreclosure action),

— Petitioner-Plaintiff,

-v-

METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, — Jointly, severally and individually, Plaintiffs in wrongful foreclosure action,

Defendants,

and

McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, Attorneys at Law, — Jointly, severally and individually,

Co-Defendants

and

ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, Attorneys at Law, Jointly, severally and individually,

Co-Defendants,

and

FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge,

Co-defendant,

and

C.A. No. 9 72789

Mich Supreme Court No. 62249

Mich Court of Appeals 78-3794

Wayne Circuit Court — 78-822-879 CZ

Prior Action (Wayne) No. 115-792

Mich Supreme Ct No 57215 Reported at 401 Mich 252

and
MICHIGAN SUPREME COURT MEMBERS,
Justices Mary S. Coleman,
Thomas Giles Kavanagh, Charles L.
Levin, John W. Fitzgerald,
James L. Ryan, Blair Moody, Jr.,
Jointly, severally and individ-
ually,

Co-Defendants

ORDER OF DISMISSAL IN PART AND
ORDER OF REMAND IN PART

At a session of said Court held in the Federal Building, in Detroit, Michigan, on January 17, 1980.

PRESENT: Honorable Anna Diggs Taylor,
U.S. District Court Judge

On the several motions of all the defendants and co-defendants herein, after hearing argument of all parties, and the Court having reviewed the files and records in this case, and for the reasons as stated on the record, the Court being fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that as to co-defendant, Allen Counard, this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan, and

that as to all remaining defendants and co-defendants herein this action be and hereby is dismissed.

/s/ ANNA DIGGS TAYLOR
United States District Court
Judge

Dated:
January 17, 1980

APPENDIX EE

United States Court of Appeals
for the Sixth Circuit

VIRGINIA CRAMER, Plaintiff-appellant v. METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, ET AL., Defendants-Appellees	Filed May 5, 1980 No. 80-1118 O R D E R

BEFORE: WEICK, LIVELY and JONES,
Circuit Judges

This cause came before the Court upon the motion of the plaintiff-appellant to stay pending appeal an order of the district court which dismissed in part and remanded in part a civil rights and attorney malpractice action removed from state court, and upon the motion of one of the defendant-appellees to dismiss the appeal from that part of the district court order remanding the claims against him to the State Court.

The Court has considered the motions and memoranda offered in support thereof, and has reviewed the record of the district court including relevant pleadings and decisions in earlier state court litigation, and concludes therefrom the appellant has not shown entitlement to the requested stay; Reed v Rhodes, 549 F.2d 1046 (6th Cir. 1976). It is further concluded that the issues upon which the decision of the remainder of the cause depends are so unsubstantial as not to need further argument, and that the motion to dismiss is well taken.

It is

Therefore ORDERED that the motion to stay be, and it hereby is, denied. It is further ORDERED that the appeal from that part of the judgment remanding the cause to the state court be, and it hereby is, dismissed; Rule 9(d)1, Rules of the Sixth Circuit. It is ORDERED that the balance of the judgment of the district court be, and it hereby is, affirmed; Rule 9(d)3, Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

/s/ John P. Hehman, Clerk

Supreme Court, U. S.
FILED
AUG - 4 1980
MICHAEL RODAK, JR., CLERK

No. 80-250

PETITION FOR CERTIORARI

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

VIRGINIA CRAMER, PETITIONER-DEFENDANT IN WRONGFUL FORECLOSURE ACTION,

PETITIONER

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, JOINTLY, SEVERALLY AND INDIVIDUALLY, PLAINTIFFS IN WRONGFUL FORECLOSURE ACTION,

McCLINTOCK DONOVAN CARSON & ROACH AND JAMES I. McCLINTOCK, MICHAEL DOELLE AND WILLIAM P. THORPE, ATTORNEYS AT LAW, JOINTLY, SEVERALLY AND INDIVIDUALLY,

ABEL SELBURN, ALLEN COUNARD AND WILLIAM R. McFADDEN, ATTORNEYS AT LAW, JOINTLY, SEVERALLY, AND INDIVIDUALLY,

FEDERAL HOME LOAN BANK BOARD, DIRECTOR AND/OR OFFICIAL AND/OR OFFICER IN CHARGE,

MICHIGAN SUPREME COURT MEMBERS, JUSTICES MARY S. COLEMAN, THOMAS GILES KAVANAGH, CHARLES L. LEVIN, JOHN W. FITZGERALD, JAMES L. RYAN, BLAIR MOODY, JR., and G. MENNEN WILLIAMS, JOINTLY, SEVERALLY AND INDIVIDUALLY,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND TO THE MICHIGAN SUPREME COURT

Virginia Cramer, pro se Petitioner
27314 Clairview, Dearborn Heights, Mich. 48127
Telephone: (313) 278-7286

PETITIONER'S APPENDIX VOLUME I

I

TABLE OF CONTENTS
FOR APPELLANT'S APPENDIX

	Page
Docket Entries	1a
NOTICE OF REMOVAL OF STATE CASE TO THE UNITED STATES COURT, Michigan Supreme Court No. 62249	12a
PETITION FOR REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN (Southern Division-Detroit)	13a
Motion for Waiver of Bond on Removal	16a
Motion for Injunction	18a
COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY, AND DEMAND FOR TRIAL BY JURY:	21a
Preamble	21a
1. JURISDICTION AND VENUE	45a
2. CAUSE OF ACTION AND FEDERAL INTERVENTION	50a
3. WRONGFUL FORECLOSURE, SLANDER OF TITLE	51a
4. ACTUAL CONTROVERSY - STATE ACTION INVOLVED	54a
5. WILLFUL AND MALICIOUS TORT . .	56a
6. FRAUD, CONCEALMENT AND DECEPTION - ATTORNEY MALPRACTICE	58a

Page

7. FRAUD, CONCEALMENT OR DECEPTION ATTORNEY MALPRACTICE McCLINTOCK DONOVAN CARSON & ROACH, MICHAEL DOELLE and WILLIAM P. THORPE 66a

8. CONSPIRATORS - OBSTRUCTIONISTS OF JUSTICE 75a

9. ACTUAL CONTROVERSY - FEDERAL ACTION INVOLVED 79a

10. INJUNCTIVE RELIEF AGAINST MICHIGAN SUPREME COURT JUSTICES 83a

11. MEASURE OF DAMAGES 88a

12. PRAYER FOR RELIEF AND DEMAND FOR TRIAL BY JURY 89a

MOTION FOR DISMISSAL BY DEFENDANT MEMBERS OF THE MICHIGAN SUPREME COURT, AND NOTICE OF MOTION (may be submitted without oral argument). 91a

OBJECTIONS TO MOTION FOR DISMISSAL BY DEFENDANT MEMBERS OF THE MICHIGAN SUPREME COURT 120a

OBJECTION TO PETITION FOR REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN (Southern Division-Detroit) AND MOTION FOR REMAND TO STATE COURT 130a

EXHIBIT "A" filed Aug 9, 1979
(Michigan Supreme Court decision dated October 6, 1977, reported at 401 Mich 252) 134a

EXHIBIT "B" Filed Aug 9, 1979
(Second Amended Complaint, prepared by Allen Counard, attorney for Plaintiff, Virginia Cramer) 146a

MOTION TO DISMISS (by Metropolitan) 164a

Page

OPPOSITION TO MOTION TO DISMISS MOTION TO STRIKE SHAM AND FALSE PLEADINGS 170a

OPPOSITION TO OBJECTION TO PETITION FOR REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT 195a

OPPOSITION TO MOTION FOR REMAND TO STATE COURT 195a

MOTION FOR REMAND OF ABOVE-CAPTIONED ACTION AND MOTION TO EXERCISE DISCRETION IN FAVOR OF ABSTENTION AND DISMISSAL OF DECLARATORY COMPLAINT 203a

OPPOSITION TO MOTION FOR REMAND OPPOSITION TO MOTION TO EXERCISE DISCRETION IN ABSTENTION AND DISMISSAL 208a

MOTION FOR JUDGMENT ON THE PLEADINGS (by Selburn) OR IN THE ALTERNATIVE SUMMARY JUDGMENT 222a

ORDER dated Aug 17, 1979 (DeMascio, J) 234a

MOTION TO STRIKE CO-DEFENDANT-SELBURN'S AFFIRMATIVE DEFENSES 234a

OPPOSITION TO (SELBURN'S) MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE OPPOSITION TO SUMMARY JUDGMENT 239a

ANSWER (by McFadden) TO COMPLAINT FOR DECLARATORY JUDGMENT 257a

PETITIONER'S REPLY TO (McFadden's) ANSWER TO COMPLAINT 268a

	Page
OPPOSITION TO (McFadden's) BRIEF IN SUPPORT OF MOTION FOR JUDGMENT ON PLEADINGS	270a
OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS	272a
MOTION TO DISMISS POST-REMOVAL ADDITIONAL DEFENDANTS AND COMPLAINTS AND REMAND ORIGINAL PROCEEDING (by Federal Home Loan Bank Board)	277a
OBJECTIONS TO MOTION TO DISMISS POST-REMOVAL ADDITIONAL DEFENDANTS AND COMPLAINTS AND OBJECTIONS TO MOTION TO REMAND ORIGINAL PROCEEDING	294a
MOTION TO CONSOLIDATE REMOVED ACTION NO. 62249 AND PRIOR ACTION NO. 57215 (STATE CASES) WITH INSTANT ACTION NO. 9-72789	301a
MOTION TO VOID, NULLIFY OR VACATE Wayne County Circuit Court ORDER dated September 27, 1968	305a
EXHIBITS (filed Nov 16, 1979) . .	317a
A - "Order Dissolving Temporary Restraining Order" dated September 27, 1968"	317a, 318a
B - Affidavit of John C. Denyer (for Metropolitan Federal Savings & Loan Association	320a
C - NOTICE OF ADJOURNMENT and NOTICE OF MORTGAGE SALE	322a
D - MORTGAGE (promissory) NOTE	324a
E - SHERIFF'S BIDDING STATEMENT OF SHERIFF'S SALE on October 1, 1968	325a

Page

EXHIBITS (continued)

G - MORTGAGE COVENANT AND AGREEMENT 327a

H - Letter dated May 6, 1968 re: Mortgage payment credited on Apr 30,1968 332a

J - SHERIFF'S INDENTURE ON MORTGAGE FORECLOSURE . . . 333a

K - METROPOLITAN MEMO AS OF SEPTEMBER 6, 1968 . . . . 337a

BRIEF IN SUPPORT OF MOTION TO VOID, NULLIFY AND/OR VACATE Wayne County Circuit Court "Order Dissolving Temporary Restraining Order" dated September 27, 1968, entered in prior action (Wayne) No. 115-792, and reported in DEFECTIVE DECISION of October 6, 1977, at 401 Mich 252 338a

RESPONSE TO PLAINTIFF'S MOTION TO VOID, NULLIFY, OR VACATE WAYNE COUNTY CIRCUIT COURT ORDER DATED SEPTEMBER 27, 1968 . . . . . 363a

OPPOSITION TO DEFENDANTS AND CO-DEFENDANTS RESPONSE TO MOTION TO VOID, NULLIFY, OR VACATE WAYNE COUNTY CIRCUIT COURT ORDER DATED SEPTEMBER 27, 1968 . . . 363a

BRIEF IN SUPPORT OF OPPOSITION TO DEFENDANTS AND CO-DEFENDANTS RESPONSE TO MOTION TO VOID, NULLIFY AND/OR VACATE WAYNE COUNTY CIRCUIT COURT ORDER DATED SEPTEMBER 27, 1968 and SUPPLEMENT TO MORTGAGOR-CRAMER'S MOTION 366a

MOTION AND NOTICE OF MOTION FOR THREE-JUDGE COURT 381a

Page

APPLICATION FOR THREE-JUDGE COURT APPLICATION FOR INTERLOCUTORY PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER BY SINCE-JUDGE PENDING HEARING BY A THREE-JUDGE COURT 383a

FEDERAL DEFENDANT'S COMBINED RESPONSE TO PLAINTIFF'S MOTIONS 410a

OPPOSITION TO FEDERAL DEFENDANTS' COMBINED RESPONSE TO PLAINTIFF'S MOTIONS 414a

Docket reference to letter re: Deferred motions pending in (Michigan) Supreme Court 421a

TRANSCRIPT, of Proceedings on January 17, 1980 . . . . . 421a

Oral Argument, Mr. McFadden . . 423a
Ms. Cramer . . . 425a
Oral Argument, Mr. Selburn . . . 426a
Ms. Cramer . . . 427a
Oral Argument, Federal Home Loan Bank Board 429a
Ms. Cramer . . . 433a
Oral Argument, Mr. Weller on behalf of Members of the Michigan Supreme Court . . . 437a
Ms. Cramer . . . 438a
Oral Argument, Mr. Jacobs on behalf of Defendant-attorney-Allen Counard 440a
Ms. Cramer . . . 443a
Oral Argument, Mr. Thorpe on behalf of himself, Metropolitan Federal Savings & Loan, and McClintock Donovan Carson & Roach, et al, attorneys at law 445a
Ms. Cramer 447a

RULING OF THE COURT (U.S. District Court) 449a

Page

ORDER OF DISMISSAL IN PART AND ORDER OF REMAND IN PART 454a

NOTICE OF APPEAL 455a

NOTICE OF ELECTION TO DEFER PREPARATION OF APPENDIX 456a

NOTICE OF HEARING, MOTION FOR STAY PENDING REVIEW 456a

OBJECTIONS OF DEFENDANT-APPELLEE COUNARD TO PLAINTIFF'S MOTION FOR STAY PENDING REVIEW 461a

MOTION TO DISMISS APPEAL (on behalf of Defendant-attorney-Allen Counard) 463a

OBJECTIONS TO MOTION TO DISMISS APPEAL 465a

BRIEF IN SUPPORT OF OBJECTIONS TO MOTION TO DISMISS APPEAL 468a

PLAINTIFF'S REPLY IN OPPOSITION TO OBJECTIONS OF DEFENDANT-APPELLEE COUNARD TO PLAINTIFF'S MOTION FOR STAY PENDING REVIEW 489a

ORDER OF THE MICHIGAN SUPREME COURT entered April 3, 1980 . . . . . 494a

MOTION TO EXTEND TIME FOR FILING OF PLAINTIFF-APPELLANT'S BRIEF 495a
Extension to 5/20/80 granted , , . 497a

MOTION TO DISMISS APPEAL (on behalf of Federal Home Loan Bank Board) . . 497a

EXHIBIT 1 (Letter) dated May 1, 1980 514a

PLAINTIFF-APPELLANT'S OBJECTIONS TO FEDERAL HOME LOAN BANK BOARD'S MOTION TO DISMISS APPEAL 515a, 516a

Page

APPELLANT'S BRIEF IN SUPPORT OF OBJECTIONS TO FEDERAL HOME LOAN BANK BOARD'S MOTION TO DISMISS APPEAL 521a

EXHIBIT A - (Letter dated Mar 31, 1978) 550a

EXHIBIT B - (Letter dated Feb 7, 1978) 551a

EXHIBIT C - (Letter dated Jan 23, 1978) 552a

ORDER entered May 5, 1980, In the U. S. Court of Appeals for the Sixth Circuit 554a

Letter dated May 5, 1980, Office of the Clerk, U.S. Court of Appeals for the Sixth Circuit 555a

Letter dated May 9, 1980, Office of the Clerk, U.S. Court of Appeals for the Sixth Circuit 556a

Letter dated May 14, 1980, by Virginia Cramer to U.S. Court of Appeals for Sixth Circuit 557a

Memo to Chief Justice and All Other Justices of the United States Supreme Court 560a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION-DETROIT

CIVIL DOCKET - 79-72789
Removal from Circuit Court (78-822-879 CZ)
Foreclosure

DATE	DOCUMENTS FILED
1979	
July 17,	1. Petition for removal from Circuit Court for the county of Wayne, filed. DD 7-17-79
July 17,	2. Cash bond for removal, filed ($250.00) DD 7-17-79
July 17,	3. Notice of filing petition for removal, filed. DD 7-17-79
July 17,	--- Summons issued. DD 7-18-79
July 17,	4. Pltf's Motion for Waiver of Bond on Removal of State Case with BA and Notice of hearing to be set by Court. DD 7-18-79
July 17,	5. Pltf's Complaint for declaratory judgment, reversal of Michigan Supreme Court decision, Injunctive relief, and money damages for injuries to person and property and demand for trial by jury. DD 7-18-79
July 17,	6. Pltf's Complaint for declaratory judgment, reversal of Michigan Supreme Court decision, injunctive relief, (Intervention) and money damages for injuries to person and property. DD 7-18-79

July 17,	7.	Pltf's Motion for Preliminary, Permanent and Eternal Injunctive Relief with BA and Notice of hearing to be set by Court. DD 7-18-79
July 20,	8.	Marshal's return executed on 7/18/79 DD 7/23/79
July 24,	9.	Marshal's return executed on 7/20/79 DD 7/25/79
July 26,	10.	Marshal's returns executed on 7/19/79 (2) DD 7/26/79
July 26,	11.	Marshal/s return executed on 7/25/79 DD 7/26/79
July 30,	12.	Marshal's return executed on 7/26/79 DD 7/30/79
Aug 1,	13.	Marshal's returns executed on 7/30/79 DD 8/2/79
Aug 3,	14.	Marshal's return executed on 8/1/79 DD 8/6/79
Aug 8,	15.	Deft Allen Counard's Motion for Remand of Action with Motion to exercise discretion in favor of abstention and dismissal of declaratory complaint with BA and Notice of hearing to be set; proof of service. DD 8/8/79
Aug 8,	16.	Deft McFadden's Motion for Judgment on pleadings with Answer to Complaint for declaratory judgment with Notice of hearing to be set and proof of service. DD 8/8/79
Aug 9,	17.	Defts' and Co-Deft's Motion to dismiss with BA and affidavit in support; Notice of hearing

to be set by Court with proof of service. DD 8/10/79

Aug 9, 18. Defts' and Co-Defts' Objections to Petition for Removal of Cause to the U.S. District Court for the Eastern District of Michigan and Motion for Remand to State Court with BA and proof of service. DD 8/10/79

Aug 10, 19. Deft Members of the Michigan Supreme Court's Motion to Dismiss with BA and proof of service. DD 8/10/79

Aug 13, 20. Co-Deft Abel J. Selburn's Answer and Affirmative Defenses to Pltf's Complaint DD 8/14/79

Aug 14, 21. Co-Deft Abel J. Selburn's Motion for Judgment on pleadings with BA and Notice of hearing to be set by Ct. Court. DD 8/15/79

Aug 15. 22. Pltf's Ex Parte Motion for enlargment of time with BA and Affidavit in support. DD 8/16/79

Aug 15, 23. Pltf's Notice of filing copy of all records, pleadings and Orders of State Case, Michigan Supreme Court No. 62249, and prior action No. 57215 reported at 401 Mich 252, with proof of service. DD 8/16/79

Aug 17, 24. Notification of Service re: Petition for Removal, Bond of Removal; Notice of filing; Motion for preliminary, permanent, and eternal

injunctive relief with BA and Notice of hearing; Demand for Jury; Pltf's Complaint. DD 8/20/79

Aug 17, 25. Affidavit of Service re: Petition for Removal of Cause, Notice of Removal of State Cause, Motion for waiver of bond on removal, brief in support. DD 8/20/79

Aug 17, 26. Ex Parte Order for enlargement of time from July 18/79 for 70 days to file response to defts and co-defts brief and pleading. DD 8/20/79 DeMascio J

Aug 17, 27. Order re: Motion for Judgment by Deft Selburn on the pleadings or Summary Judgment will be denied unless w/in 5 days deft files a proof of service required by local rule IX(1) DD 8/20/79 DeMascio J

Aug 20, 28. Deft William McFadden's Brief in Support of Motion for Judgment on Pleadings. DD 8/21/79

Aug 23, 29. Proof of Service re: Ex Parte Motion for enlargment of time with Ex Parte Order for enlargment of time.DD 8/23/79

Aug 23, 30. Proof of service re: Answer to Complaint for declaratory judgment, Motion for Judgment on the pleadings or Summary Judgment and Notice of hearing DD 8/23/79

Aug 31, 31. Federal Home Loan Bank Board's Motion to dismiss Post Removal Additional Defts and Complaints and Remand Original Proceedings with BA and Notice of hearing to be set; certificate of service. DD 8/31/79

Sept 17, 32. Letter from Pltf requesting correction on pleading #12 (marshal's return)

Sept 18, 33. Letter from Corbin Davis (Supreme Court) re: motions pending in Supreme Court are to be deferred until U.S. District Court makes ruling. DD 9/19/79

Sept 26, 34. Pltf's opposition to objection to petition for removal of cause to the US District Court/Opposition to motion for remand to State Court B/A w/ affidavit. DD 9/27/79

Sept 26, 35. Motion to consolidate removed action No. 62249 and Prior action 57215 (state cases) with instant act. no. 9-72789 w/B.A. Affidavit and Notice of hearing (court to set date) DD 9/27/79

Sept 26, 36. Petitioner's reply to McFadden's answer w/affidavit Opposition to McFadden's Brief in support of motion for judgment on pleadings and Opposition to motion for Judgment on the pleading Brief in support of Opposition to McFadden's motion and affidavit. DD 9/27/79

Sept 26, 37. Objections to motion to dismiss post removal additional defendants and complaints and objections to motion to remand original proceeding Brief in support of Obj. Affidavit DD 9/27/79

Sept 26, 38. Opposition to motion for remand, opposition to motion to exercise discretion in abstention and dismissal w/B.A. affidavit. DD 9/27/79

Sept 26, 39. Motion to strike sham and false pleadings, opposition to motion to dismiss W/ notice of hearing (date to be set by court) B.A. and affidavit. DD 9/27/79

Sept 26, 40. Objections to motion for dismissal by Deft. members of the Michigan Supreme Court; Petitioner Cramer's affirmative matters and to amend the Word Reversal to read Reformation of the Michigan Supreme court decision reported at 401 Mich 252. w/B.A. affidavit and proof of service. DD 9/27/79

Sept 26, 41. Pltf's motion to strike defenses opposition to Selburn's motion for judgment on the pleadings or in the alternative opposition to summary Judgment w/affidavit Exceptions to Co-Defendant Selburn's answer, Affidavit Opposition to Selburns affirmative Defenses B.A. affidavit, Notice of Hearing and Proof of service. DD 9/27/79

Sept 26, 42. Proof of service RE: 34, 35, 36, 37, 38, 39, 40, 41, DD 9/27/79

Nov 8, 43. Order of Reassignment from Judge DeMascio to Judge Taylor. Feikens J DD 11/9/79

Nov 16, 44. Pltfs' Motion to void, nullify, or vacate Wayne County Circuit Court Order dated Sept 27/68 with BA and Notice of hearing to be set by Court; proof of service. DD 11/16/79

Nov 23, 45. Defts and Co-Defts Response to Pltf's Motion to void nullify, or vacate Wayne County Circuit Court Order dated Sept 27/68 with proof of service. DD 11/23/79

Dec 3, 46. Pltf's Opposition to Defts and Co-Defts response to Pltf's Motion to void, nullify, or vacate Wayne County Circuit Court Order dated Sept 27/68, with brief and affidavit in support, proof of service. DD 12/3/79

Dec 10, 47. Request for response to deft's motions to dismiss, or to remand, or for judgment on the pleadings by 12/21/79 and notice of hrg. set for 1/17/80 at 9:30 am. Taylor, J. DD 12/11/79

Dec 21, 48. Pltf's Supplemental Pleadings in opposition to Motion to dismiss, or remand, or judgment on the pleadings; Motion and Notice of Motion for Three Judge Court; with application for three Judge Court

		and application for interlocutory preliminary injunction and temporary restraining order by single Judge pending hearing by a Three Judge Court; Brief in support and proof of service. DD 12/26/79
1980		
Jan 11,	49.	Federal Deft's Combined Response to Pltf's Motions DD 1/14/80
Jan 17,	50.	Pltf's Opposition to Federal Deft's Combined Response to Pltf's Motions DD 1/18/80
Jan 17,	---	Deft's McFadden's motion for judgment on the pleadings heard and granted; Defts - Selburn's Motion for judgment on the pleadings heard and granted; Deft's Federal Home Loan's motion to dismiss granted; Deft Allen Counard's Motion to remand cause to Circuit Court, granted. Deft Metro Savings Assoc's Motion to dismiss granted, Motion to remand denied; Defts (Members of Supreme Ct) Motion to dismiss granted. Taylor, J DD 1/18/80
Jan 18,	51.	Order of Dismissal in Part and Order of Remand in part to the Wayne County Circuit Court Taylor, J DD 1/21/80
Feb 1,	---	File mailed to Wayne County Circuit Court. DD 2/1/80
Feb 5,	---	Transcript of 1/17/80, re motions received, forwarded to Wayne County Circuit Court. DD 2/6/80

Feb 8, 52. Pltf's Notice of Appeal. DD 2/11/80

Feb 11, 53. Letter to Atty re: Notice of Appeal. DD 2/11/80

Feb 11, 54. Proof of mailing re: Notice of Appeal (CCZ, Court Reporter, Attorneys for Defts, Pltf in pro per) DD 2/11/80

Feb 8, 55. Proof of service re: Opposition to Federal Defts' Combined response to Pltf's Motions. DD 2/11/80

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 80-1118

DATE 1980		FILINGS -- PROCEEDINGS
2/25	1)	Notice of Appeals, filed; and cause docketed
3/3	2)	Appearance of W. Thorpe for the appellees
3/6	3)	Appearance of W.R. McFadden for the appellees
3/7	4)	Motion: appellant to file deferred appendix (m-3/5) (Motion Granted JPH 3/12)
3/11		Certified Record (1 vol. pleadings, 1 vol. transcript)
3/14	5)	Appearance of A.J.Selburn for appellees
3/21	6)	Notice of Hearing from appellant, pro se (m/p-3/18-19)

3/21	7)	Motion: appellant pro se for stay with affidavit in support (m/p-3/18-19)
3/21	8)	Appearance of S. Behringer for defendant-appellee
3/27	9)	Appearance of J.P.Jacobs for appellee, Counard (m-3/25)
3/27	10)	Motion: appellee, Counard to dismiss the appeal (m-3/25)
3/27	11)	Response of appellee, Counard to appellant's motion to stay (m-3/25)
4/7	12)	Response of pro se appellant to appellee, Counard's motion to dismiss with reply in opposition to Counard's (sic, opposition to appellant's) motion to stay (m-4/3)
4/11	13)	Supplement to response of pro se appellant in opposition to motion to dismiss (m-4/8) (Michigan Supreme Court Order)
4/14	14)	Motion: Appellant's brief to 5/20/80 (m-4/10) (Ext Granted 4/15)
4/14	15)	Corrected copy of supplement to response of pro se appellant in opposition to motion to dismiss (Michigan Supreme Court Order)
4/25	16)	Motion: appellee Federal Home Loan Bank Board to dismiss with brief in support (m-4/24)

5/05	17)	Order denying the motion to stay the appeal; (sic, stay pending appeal) further, order dismissing that part of the judgment of the District Court remanding the cause to the state court and affirming the balance of the judgment of the District Court pursuant to Rule 9(d)3 Rules of the Sixth Circuit (Weick, Lively and Jones, JJ) (Duty Panel)
5/6	18)	Response of pro se appellant in opposition to Federal Home Loan Bank's motion to dismiss (m-5/2)
6/23	19)	Mandate issued; Certified record returned to U. S. District Court, Detroit, Michigan.

Notice of Removal

Filed July 17, 1979 No. 79-72789
United States District Court for the Eastern District of Michigan, Southern Division-Detroit

NOTICE OF REMOVAL OF STATE CASE TO THE UNITED STATES COURT - Mich S. Ct No. 62249

TO: METROPOLITAN SAVINGS ASSOC., a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOC., et al, James I. McClintock, Roger C. Richards, John C. Denyer, 31550 Northwestern Hwy., Farmington, Michigan

TO: JAMES I. McCLINTOCK, WILLIAM P. THORPE McCLINTOCK DONOVAN CARSON & ROACH, attorneys at law, 2150 Guardian Bldg., Detroit, Michigan

TO: MICHAEL DOELLE, attorney at law c/o 600 E. Lafayette, Detroit, Mich.

TO: ALLEN COUNARD, attorney at law 1214 Travelers Tower Southfield, Michigan

PLEASE TAKE NOTICE that the above-captioned Michigan State case is hereby removed from the Michigan courts, copy of Petition for Removal attached hereto, having been filed in the United States District Court for the Eastern District of Michigan, Southern Division-Detroit, 231 W. Lafayette, Detroit, Michigan, (Federal Building) and - that pursuant to 28 USC 1446 (e) the Michigan State courts shall proceed no further unless and until the case is remanded.

Dated:
July 10, 1979

/s/ Virginia Cramer
Petitioner (Defendant in wrongful foreclosure)
27314 Clairview
Dearborn Heights, Mich.
Telephone: 278-7286

Filed July 17, 1979 No. 79-72789
United States District Court for the Eastern District of Michigan, Southern Division-Detroit

PETITION FOR REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN (SOUTHERN DIVISION-DETROIT)

Now comes Virginia Cramer, Petitioner-Plaintiff (Defendant in wrongful foreclosure action) in propria persona, and petitions this Honorable Court to remove the cause initiated in the Wayne County Circuit Court, CA #78-822-879 CZ, and which said cause is currently pending in the Michigan Supreme Court No. 62249, to the U. S. District Court for the Eastern District of Michigan (Southern Division-Detroit) for the following reasons:

1. Plaintiff (in reality, Defendant in wrongful foreclosure action) incorporates by reference herein her Complaint wherein she enumerates the Federal questions involved in this litigation, including prior action in which the Michigan Supreme Court defective decision is reported at 401 Mich 252, Cramer vs Metropolitan Savings and Loan, et al, and including but not limited to specific denial of rights guaranteed by the United States Constitution, Amendments Fifth and Fourteenth, and denial of specific rights granted by the laws of the United States, 42 USCA 1983, 1985, 1986 and 1988; and 28 USCA 1343.

2. Plaintiff-petitioner (Defendant in wrongful foreclosure action) further alleges that she is, in effect and in reality, the DEFENDANT in this matter, for

the reason that the initiation of said foreclosure action was within the control of the mortgagee-lending institution, Metropolitan Federal Savings and Loan Association, named defendants and their attorneys, named co-defendants herein; and whereby mortgagor-Virginia Cramer was denied a choice of forum and that her designation as 'plaintiff' is not truly reflective of her true position in this matter and which involves prior action reported at 401 Mich 252 by the Michigan Supreme Court.

3. That the mortgagee-lending institution (hereinafter called "Metropolitan") initiated this matter of foreclosure by advertisement (MCLA 600.3201 et seq., MSA 27A.3201 et seq.) instead of by a due process court-hearing, and that therefore, Plaintiff-mortgagor, is, in effect and in reality, the defendant in this matter in defense of the wrongful foreclosure action.

4. That this petition for removal is founded on 28 USCA 1441 (a), (b), (c); 28 USCA 1443 (1) and (2) and 28 USCA 1446 (e), and 42 USCA 1983, et seq.

5. That the Michigan State courts, at all levels of jurisdiction in this cause of action and in the prior action reported at 401 Mich 252, have denied your plaintiff (defendant in wrongful foreclosure action) due process of law by denying her a day in court, have denied your plaintiff (defendant in wrongful foreclosure action) the equal protection of the laws in violation of the Fifth and Fourteenth Amendments to the United States Constitution, and in deprivation of redress of grievances and deprivation of civil rights, under color of authority of

State common-law policy and under color of Michigan State Statute MCLA 600.3201 et seq. MSA 27A.3201 et seq., as applied, in deprivation of equal protection of the laws.

6. That pursuant to 28 USCA 1446 (e) the Michigan State courts shall proceed no further unless and until the case is remanded.

WHEREFORE Petitioner prays that this Honorable Court remove this matter to the United States District Court for the Eastern District of Michigan, Southern Division-Detroit.

Dated: July 10, 1979

/s/ Virginia Cramer,
Petitioner, Defendant
in wrongful foreclosure

Filed July 17, 1979 - NOTICE OF HEARING

TO; THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, Federal Building, 231 W. Lafayette, Detroit, Michigan

TO: THE DEFENDANTS and CO-DEFENDANTS

PLEASE TAKE NOTICE that the attached Motion for Waiver of bond on removal of State case will be brought on for hearing before the United States District Court for the Eastern District of Michigan, Southern Division-Detroit, to be set by the Court before the HONORABLE _____ in his courtroom of the United States Courthouse, 231 W. Lafayette Blvd., Federal Bldg. Detroit, Michigan.

Dated: July 10, 1979

/s/ Virginia Cramer
Petitioner - Defendant
in wrongful foreclosure

Filed July 17, 1979 - MOTION FOR WAIVER OF BOND ON REMOVAL OF STATE CASE

Now comes the Petitioner-Defendant in wrongful foreclosure action, Virginia Cramer, in pro per, and pursuant to 28 USCA 1443 and 1446 and 1447, shows to the Court as follows:

1. That your Petitioner incorporates by reference herein Preamble and the several counts of her Complaint including but not limited to Willful and Malicious Tort (in wrongful foreclosure action), Fraud, Concealment or Deception (by attorneys at law), Fraud Perpetrated Upon the State Courts (by attorneys-co-defendants herein and mortgagee-lending-institution, defendants herein) and Conspiracy to deny civil rights, due process of law, equal protection of the laws and Conspiracy to deny title-holders of mortgaged property the right to pay real property taxes by deprivation of equal rights, under color of State common-law policy, under color of authority derived from Foreclosure by Advertisement Statutes, MCLA 600.3201 et seq. MSA 27A.3201 et seq., and Deprevation of equal civil rights of citizens of the State of Michigan and citizens of the United States and denial of the opportunity and/or right to be heard in violation of the due process and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

2. That the conspirators, as obstructionists of justice, engaging themselves in said conspiracy, are mainly the lawyers and attorneys at law who represent their own interests as "collectors of escrow funds" and who scheme and deviate from and violate the law while pretending to represent their

clients interests and while depriving the State of Michigan (and the several other States) and mortgagors as title-holders of real property, of security in the collection and payment of taxes.

3. That this case has been tossed around in the jurisdiction of the State courts for over ten (10) years, where your Petitioner has never had her day in court on the wrongful foreclosure action, and where she has suffered unreasonable and excessive litigation expenses and damages, oppression and humiliation and loss of time damages by the fruad, deceit and misconduct and malpractice of attorneys (on both sides) and to require bond from your Petitioner on Removal of State case would be an undue and unjust hardship on your Petitioner.

WHEREFORE your Petitioner-defendant in wrongful foreclosure action and federal plaintiff-mortgagor prays that this Honorable court waive bond requirements on removal of State case.

Dated:
July 10, 1979

/s/ Virginia Cramer
Petitioner, Defendant
in wrongful foreclosure

BRIEF IN SUPPORT OF WAIVER OF BOND ON REMOVAL OF STATE CASE

Bond requirement may be waived at the discretion of the court.

Dated:
July 11, 1979

/s/ Virginia Cramer

Filed July 17, 1979 - NOTICE OF HEARING

TO: THE DEFENDANTS and CO-DEFENDANTS

PLEASE TAKE NOTICE that the attached Motion for Preliminary, Permanent and Eternal Injunctive Relief will be brought on for hearing before the United States District Court for the Eastern District of Michigan, Southern Division-Detroit, to be set by the Court before the HONORABLE _____ in his courtroom of the United States Courthouse, 231 W. Lafayette Blvd., Federal Building, Detroit, Michigan.

Dated:
July 10, 1979 /s/ Virginia Cramer

Filed July 17, 1979 - MOTION FOR PRELIMINARY, PERMANENT AND ETERNAL INJUNCTIVE RELIEF

Now comes Plaintiff-Petitioner, Virginia Cramer, in pro per, and moves the court for Preliminary, Permanent and Eternal Injunctive Relief and that an enjoining Order be issued against the Justices of the Michigan Supreme Court, and each of them, prohibiting, preventing, precluding, inhibiting and restraining said Justices of the Michigan Supreme Court from rendering decisions and/or opinions relative to any or all important matters, and including the following:

1. Restraining and enjoining the taking of judicial notice without proof and without evidence.

2. Restraining and enjoining the rendering of decisions and/or opinions in favor of unscrupulous litigants and their attorneys

who submit erroneous, falsified and fraudulent statements in their pleadings to the court and where said statements are unsupported and not priorly litigated in the procedures of the lower courts.

3. Restraining and enjoining the rendering of decisions and/or opinions based on false facts.

4. Restraining and enjoining the rendering of decisions and/or opinions where due process and equal protection of the laws are denied and in violation of the Fourteenth Amendment to the United States Constitution.

5. Restraining and enjoining the rendering of decisions and/or opinions in favor of implied covenants and agreements which are unenforceable.

6. Restraining and enjoining the rendering of decisions and/or opinions by failure in their duty to declare a contract or covenant and agreement illegal.

7. Restraining and enjoining the rendering of decisions and/or opinions by exertion of power due to mental disability and jeopardizing the security of property and titleholders of property and jeopardizing the security of the State.

8. Restraining and enjoining the rendering of decisions and/or opinions by exertion of power where fraud is perpetrated upon the court and condoned by the court.

WHEREFORE your Petitioner, Virginia Cramer, in pro per, prays that a Preliminary, Permanent and Eternal Injunctive Order be issued against the Justices of the Michigan Supreme Court, and each of them, prohibiting,

preventing, precluding, inhibiting and restraining and enjoining the rendering of decisions and/or opinions due to mental disability of said persons.

Dated:
July 10, 1979 /s/ Virginia Cramer

Filed July 17, 1979 - BRIEF IN SUPPORT OF PRELIMINARY, PERMANENT AND ETERNAL INJUNCTIVE RELIEF

42 USCA 1983 was enacted by Act of Congress for the express purpose of "enforcing the provisions of the Fourteenth Amendment to the United States Constitution." The role of the Federal Government as a guarantor of basic federal rights against state power is clearly established. Federal Law clearly allows for enjoining a State judge. Further, this request for issuance of restraining and enjoining Order is not intended as a restraint on the performance of the duties of the justices; on the contrary, it is intended as a restraint on their activities which the said justices are not authorized to perform, in any event.

The credibility of the Michigan Supreme Court is again at stake. The security of the State of Michigan should not be jeopardized. No thought for the security of the State was given when the decision rendered in Cramer v Metropolitan, 401 Mich 252, was written. What a mess!

Dated:
July 11, 1979 /s/ Virginia Cramer

Filed July 17, 1979
U S District Court No. 79-72789

COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY, AND DEMAND FOR TRIAL BY JURY

Now comes Petitioner-Plaintiff (Defendant in wrongful foreclosure action) Virginia Cramer, in propria persona, and complains against the above-named defendants and co-defendants arising under the Constitution and laws of the United States, pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and 42 USCA 1983, 1985, 1986, 1988; founded on 28 USCA 1343, 12 USCA 1461, et seq., 12 USCA 1701, et seq., 15 USCA 1, et seq., 28 USCA 1441 and among other statutory provisions and Federal questions.

PREAMBLE

1. Plaintiff Virginia Cramer, in pro per, (in reality, a "Defendant-mortgagor" in wrongful foreclosure action, as hereinafter detailed) hereinafter referred to as "Cramer", purchased real property (home-residence) in 1963 and gave a mortgage to Metropolitan Federal Savings and Loan Association (hereinafter referred to as "Metropolitan").

2. An "escrow" fund was required by mortgagee-Metropolitan as one of the covenants under said mortgage, to wit: Cramer agreed to pay "escrow" (without which, said mortgage-loan was not available) therein in accordance with the estimate of needs by Metropolitan, and Metropolitan implied both to make realistic and proper estimates

and implied to pay from said "escrow" fund the taxes and insurance premiums as they became due on said real property. Metropolitan agreed that said "escrow" funds would be held without interest thereon to pay said taxes and insurance when due.

3. During the 56 month period that followed said purchase, Cramer regularly and conscientiously made her timely mortgage payment of principal, interest and "escrow" each and every month as they became due as follows:

Purchase price	$18,950.00
Down payment	2,450.00
Balance to mortgage	$16,500.00

The "Loan Settlement Statement" itemized the monthly payments as follows:

Principal and Interest	$103.81
Tax Escrow	22.25
Insurance Escrow	4.00
MGIC (Mortgage Guaranty Insurance Corp.) escrow	3.44
	$133.50

Metropolitan furnished installment payment cards to Cramer and by which said payment cards Cramer made payments to Metropolitan each and every month without fail, as follows:

1st payment due 9-15-63

BY PAYMENT CARDS	TOTAL REQUIRED BY METROPOLITAN	CRAMER PAID
1963		
4 months @ $133.50	$ 534.00	$ 534.00
1964		
12 months @ $133.50	$1,602.00	$1,602.00
1965		
2 months @ $133.50	267.00	267.00
4 months @ $147.00	588.00	588.00
6 months @ $147.00	882.00	1,284.94
1966		
12 months @ $147.00	1,764.00	2,771.41
1967		
2 months @ $147.00	294.00	444.04
1968		
2 months @ $150.00	300.00	478.22
1 month @ $154.00	154.00	245.04
1 month @ $186.00 (Apr)	186.00**	196.17
	$8,071.00	$10,735.13
Additional escrow paid:		
December 1963	144.00	144.00
March 1965		243.00
		$11,122.13
at closing, July 29 '63	619.05	619.05
Total payments including "escrow"	$8,834.05	$11,741.18

The payment made for April 15, 1968, which was the last current monthly installment, immediately prior to the published foreclosure of May 23, 1968, was allocated by Metropolitan as follows:

** 4-26-68	Principal & interest	$103.81
	Escrow	82.19
	Additional principal	10.17
		$196.17

4. That during said 56 month period, Metropolitan breached the covenant agreement as relates to "escrow", repeatedly, in that:

(a) Metropolitan failed, refused and neglected to properly estimate the "escrow" fund needs and, in fact, revised their "requirements" as frequently as five (5) times within a two-month period, during February and March of 1965.

(b) Failed, refused and neglected to make property tax payments when they became due on said property in the years 1963, 1964, 1965 and 1967; thus, jeopardizing Cramer's property, eliminated certain income tax deductions in certain years, and otherwise harmed her as hereinafter detailed and complained of.

5. Prior and during the year 1968, Cramer made numerous and repeated requests on Metropolitan for receipts showing what sums had been owed or paid, when and to whom payments had been made out of said "escrow" fund, and further Cramer asked for a total accounting of said "escrow" fund, which said requests Metropolitan alternately ignored completely or refused to satisfy.

6. On April 26, 1968, Metropolitan wrote a letter to Cramer refusing to furnish any receipts or copies of receipts, said letter saying, in part, as follows:

> "We are unable to send you receipts, as they must be kept in the file. Even with the receipts you would still probably have difficulty in fully understanding all of the transactions."

7. During the entire history of this mortgage loan, while Cramer paid "escrow" moneys to Metropolitan, said mortgagee-Metropolitan never furnished any receipts to morthagor-Cramer, and said mortgagor-Cramer never saw any tax bills as assessed in her name as title-holder of said property; and mortgagor-Cramer never saw any billings for insurance in her name, because Metropolitan refused to provide anything to substantiate said "escrow" as estimated and required by Metropolitan.

8. In the interim, between April 26, 1968 and May 15, 1968, Cramer spoke to various and several people connected with Metropolitan Federal Savings and Loan regarding their failure to pay taxes and insurance when due with the "escrow" funds, and also attempting to resolve disputes as to the excessive amounts of "escrow" Metropolitan was requiring (called "cushioning" in the industry), and this mortgagor-Cramer was yelled at in the following words: "What the hell do you care when we pay the taxes?" Further, on April 27, 1968, the Chairman of the Board of Directors of Metropolitan Federal Savings and Loan, JAMES I. McCLINTOCK, told Cramer that it didn't matter if the taxes were in default.

9. The culmination of the foregoing was that Cramer asked the Metropolitan people that she be permitted to pay her own taxes and insurance directly, rather than pay "escrow" for Metropolitan to mishandle, inasmuch as it was only by so doing that she could be secure in the knowledge that these liabilities were in fact properly, accurately and timely paid.

10. Without any notice of intent to

foreclose, without any warning, without any written demand for anything, Metropolitan caused to be published on May 23, 1968, in the Detroit Legal News "Notice of Mortgage Sale" as follows, in part:

"Notice of Mortgage Sale * * * Default having been made in the conditions of a certain mortgage made by VIRGINIA CRAMER to METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION * * * on which mortgage there is claimed to be due at the date of this notice (May 23, 1968) the sum of $12,519.37, and an attorney's fee as provided for in said mortgage, and no suit or proceedings at law having been instituted to recover the moneys secured by said mortgage, or any part thereof, * * * "
(emphasis added)

11. The balance on the mortgage loan as of said date of May 23, 1968, was $12,041.91 less "escrow" credit balance of $32.92, or principal debt owing of $12,008.99.

12. The foreclosure figure of $12,519.37 included amounts as follows:

"Escrow moneys" for future taxes and insurance, not yet assessed and not yet billed - - - $433.95		
Less Credit in "escrow"	32.92	$ 401.03
Interest, at 7% (contrary to note)		76.43
Principal balance owing		12,041.91
Published foreclosure amount		$12,519.37

13. No taxes or insurance amounts were due; none were assessed; none were billed; none were unpaid at the time of the foreclosure dated May 23, 1968. The next tax

billing in July, 1968, was $101.33 (which Cramer paid directly in July, 1968) and the insurance had been prepaid through and including July, 1969.

14. Metropolitan utilized the Foreclosure by Advertisement statute (MCLA 600.3201 et seq., MSA 27A.3201 et seq.) and the power of sale in the mortgage covenant and agreement to foreclosure and accelerate the payment of Cramer's own moneys for "escrow" for future payments of taxes and insurance, which are not debts, in an excessive amount ($401.03), without any prior demand or notice.

15. The excessiveness of said amount of $401.03 (called "cushioning" in the industry) is shown as follows (if Cramer had paid said $401.03):

		Escrow Balance
As of April 19, 1968, "escrow" requirements increased to $82.19 per month, and mortgagor paid $196.17 by payment-card on 4-26-68		$ 32.92
By payment cards at $82.19 per month for May through December 1968, 8 months @ $82.19		657.52
Additional $401.03 "required) for escrow		401.03
		$1,091.47
Obligations to be paid in 1968 from escrow:		
July 1968 City Tax	$101.33	
August 1968 MGIC Ins.	30.10	
December 1968 County Tax	491.09	622.52
Excessive "escrow" required by Metropolitan (by foreclosure proceedings)		$ 468.95

16. Metropolitan admits that the "escrow" funds belonging to mortgagors are invested where a profit is realized and for self-dealing for mortgagee's benefit only.

16 a. In March of 1965 Metropolitan "required" Cramer to pay a lump sum of $464.03 (which Metropolitan calculated as $13.00 per month shortgage for 18 months, or $464.03) and which Cramer disputed and re-calculated as $13.50 times 18 months - equals $243.00, and Cramer sent to Metropolitan the said amount of $243.00, together with her regular timely current monthly payment of $147.00 principal, interest and "escrow".

17. Without Cramer's accounting background and experience, she would never have detected the deception and sophisticated trickery and subterfuge which Metropolitan utilized to "cushion" the "escrow" requirements with excessive "escrow" funds.

18. That the Metropolitan people were furious with Cramer when in March or April 1965 Cramer paid said $243.00 lump sum in addition to her regular monthly installments for "escrow" and which resulted as follows:

Escrow amounts Required by Metropolitan

at closing, unverified	$ 136.50
3 years prepaid insurance	144.00
18 months @ 29.69	534.42
3-15-65 installment	43.19
additional escrow 3-15-65	464.03
	$1,322.14
1965 9 remaining months at $43.19 per month	388.71
	$1,710.85

Paid Out From Escrow		
3 years prepaid insurance	$144.00	
1963 city taxes	57.00	
1964 city taxes	57.00	
1963 county taxes	355.59	
1964 county taxes	371.43	
MGIC premium (1964)	40.62	
1965 city taxes	59.93	
MGIC premium (1965)	39.68	
		$1,125.25
(Escrow amounts required by Metropolitan, see previous page)		$1,710.85
Excessive escrow amount "required" 3-15-65		$ 585.60

Escrow Amounts Paid by Cramer		
at closing, unverified, $619.05		$ 136.50
Prepaid insurance		144.00
18 months @ $29.69		534.42
3-15-65 installment		43.19
18 months @ $13.50		243.00
		$1,101.11
1965 9 remaining months at $43.19 per month		388.71
		$1,489.82
Escrow amounts paid out from Metropolitan's figures (above)		1,125.25
Escrow surplus balance in Cramer's account 12-30-65		$ 364.57

19. That Metropolitan showed on their statement ending on December 30, 1965, the above shown escrow surplus balance in the amount of $364.57.

20. No county taxes were paid in 1963. No city or county taxes were paid in 1964. The taxes for 1965 (city) were paid when seven (7) months delinquent. Metropolitan

absorbed all penalties, interest charges and late charges on all said delinquent taxes, including for 1967. The delinquent payments were not for lack of funds, and, in fact, funds were available for the timely payments to avoid late charges and interest penalties.

21. Metropolitan's statement for Cramer's mortgage account for the year ending 1964 showed a surplus escrow balance of $513.92, with no moneys disbursed for payment of any taxes or insurance.

22. Cramer had paid to Metropolitan $934.90 interest on said mortgage during the year 1964 and where Metropolitan's statement for 1964 showed only $856.32 for the year 1964 as total interest.

23. That Metropolitan, while self-dealing with said "escrow" funds allowed taxes and insurance to become delinquent, but paid same with penalties, late charges or interest charges for said delinquent tax payments, while prior to said delinquent payments Metropolitan utilized said "escrow" funds for self-dealing purposes.

24. That on/or about May 10, 1968, Metropolitan "required" additional escrow moneys in the amount of $401.03, and at the same time refusing to substantiate their "requirements" with receipts or copies of receipts.

25. Cramer informed the people at Metropolitan that their "requirements" were inconsistent with the terms and conditions of the mortgage covenant and that their "requirements" were excessive.

26. Cramer's next current payment was due on May 15, 1968, with the terms in the promissory note allowing payment to be made during the 15 days from May 15 through and including May 30, 1968, without penalty or late charge.

27. That on/or about May 16, 1968, Metropolitan and their attorneys composed and delivered to the Detroit Legal News, the "Notice of Mortgage Sale" on Virginia Cramer's property, without notice to said Virginia Cramer, and the first insertion was published on May 23, 1968, well within the 15-day forebearance or waiver period of the mortgage note.

28. That Metropolitan refused to credit Cramer's payment made on May 29, 1968, "on account of the forelcosure."

29. On June 1, 1968, Cramer found the newspaper clipping tacked on her front doorsill entitled "Notice of Mortgage Sale" which was dated May 23, 1968, and where Metropolitan's affidavit shows that said posting was made on May 31, 1968.

30. That in June and July 1968, Cramer sent to Metropolitan two (2) separate checks for the current June and July 1968 installment payments on said mortgage note.

31. Metropolitan returned said two (2) checks for June and July 1968, but never returned Cramer's payment made on May 29, 1968, and Metropolitan also wrote to Cramer saying that no moneys were acceptable "on account of the foreclosure."

32. The said notice of foreclosure by Metropolitan was first published on May 23,

1968, and obviously it was drafted and prepared by Metropolitan at a date prior thereto; and was published also on May 30, June 6, 13, 20 and 27, July 4, 11, 18 and 25, August 1, 8 and 15, 1968, with the sale date set for August 20, 1968, and during which time Metropolitan refused to accept any moneys from Cramer.

33. Cramer then caused a Complaint to be filed in the Wayne County Circuit Court on August 12, 1968, requesting, among other relief, that the court issue a temporary restraining order enjoining the mortgage sale and/or foreclosure action. Said Complaint was amended on August 22, 1968.

34. On September 6, 1968, a "proceeding" was held where Cramer was not permitted to be heard and there was no testimony on Cramer's behalf, at which hearing the Circuit Judge determined that there was a default in the mortgage and ordered that the restraining order be dissolved, and whereby said Order was entered on September 27, 1968.

35. In said "proceeding" Metropolitan advised the Court that their claims were set forth in affidavit, and Metropolitan further advised that the said affidavit showed a "deficiency in escrow fund", but said affidavit, to wit: of John C. Denyer dated August 23, 1968, stated, in its essential portion, that Metropolitan requested of Cramer that she make certain increased and additional payments into the escrow fund, but that she failed and refused to pay them. No testimony was given in support of this contention; no showing was made that a demand has ever been hade on Cramer and/or that she had ever either failed or refused to pay; and there was no showing whatsoever that

there was any deficiency in said escrow fund. Further, the Court said "an affidavit does not mean anything."

36. Metropolitan sold Cramer's property to themselves on October 1, 1968, by Sheriff's sale where the Sheriff's Bidding Statement shows no deficiency in escrow, but instead showed an "escrow" credit balance which Metropolitan applied in reduction of the principal balance.

37. Cramer redeemed said property on June 5, 1969, by obtaining another first mortgage at a higher interest rate, with great difficulty, and at costs to her of in excess of $9,000.00, exclusive of any of the costs of litigation subsequently, and exclusive of the several areas of damages set forth in her complaint.

38. Cramer subsequently, on March 16, 1970, filed a Motion for leave to file a second amended Complaint, in pro per, when she discovered that her attorney, Abel Selburn, had abandoned the case in fraud of his client-Cramer.

39. On March 30, 1970, the successor Judge (of Judge Murphy who became deceased in 1969) ruled: "the court having previously determined on September 27, 1968, that the plaintiff was in default on her mortgage and the matter is therefore res judicata."

40. The said Order of March 30, 1970, was entered four (4) days in advance of the date scheduled for hearing of said motion, to wit: April 3, 1970, and, when this was subsequently brought to the attention of the Court, the Court, again, without hearing, entered an order nunc pro tunc, reaffirming

its original order that the matter was res judicata.

41. Metropolitan thereafter brought a Motion for Summary Judgment, and the Judge granted said motion on May 29, 1970, again based upon the holding of res judicata.

42. The foregoing matter was appealed to the Michigan Court of Appeals, and by per curiam decision the court found that the "Summary 1968 hearing on the order to show cause was not a trial hearing," that "a decision on a preliminary motion in no way effects a final decree," and that "Mrs. Cramer's evidence was not heard" and finally that "she (Cramer) was entitled to a full trial hearing on her claims that Metropolitan wrongfully foreclosed her mortgage" (emphasis supplied); the matter was reversed and remanded back to the Circuit Court.

43. In the Wayne Circuit Court, before still another Circuit Judge (the second Judge having disqualified himself), Cramer filed a second Amended Complaint, together with a Jury Demand; the said Complaint containing six (6) counts.

44. Depositions were taken under said Second Amended Complaint of both Cramer and Defendant-Roger C. Richards, President of Metropolitan, which, despite the overall evasive and uncooperative quality of Mr. Richards' answers, he did state, among other things:

(a) The policy of Metro is that they generally make demands for any escrow deficiency "for a period of time prior to a foreclosure action", and

(b) Metro's policy further is "when a loan is in default attempts are made to

correct that default and when it appears it can't be corrected the mortgagor is notified that foreclosure be started", and legal counsel takes over (emphasis supplied); and

(c) "MGIC insurance is for the protection of the lender, When we (Metro) pay it, is probably not material. We may even make a judgment not to pay it." (emphasis supplied); and

(d) It is the policy of Metro that if there is a deficiency based on improper escrow amounts "it is our general policy to work out some arrangements, particularly with large amounts, where they (mortgagors) might make additional payments to escrow through the next 12 months" (emphasis supplied).

(e) That Metropolitan did not know how the foreclosure figure of $12,519.37 (as published) was arrived at, and that they did not have records to substantiate the figure of $12,519.37 (as published in the foreclosure of Cramer's property). (Balance owing was $12,041.91)

(f) That Cramer asked members of the organization (Metro) to pay her own taxes, but that they explained that this could not be done because of (Federal) regulations as the major reason; that "We are bound by law to maintain an escrow account for the payment of taxes and insurance." and -- "Certainly I (Mr. Richards) don't know of anything in our agreements or contracts that bind us to pay taxes timely."

(g) That Metro requests from the various taxing authorities that tax bills be sent to their institution (which is why Cramer never

saw any tax bills before or after payment) and there is no violation of the law for the institution (Metro) not to pay taxes when due, and that Metro is bound to do nothing with said "escrow" moneys belonging to the mortgagor.

45. On October 12, 1971, a pretrial conference was held where the Judge characterized the suit as follows: "This is a suit to set aside a mortgage foreclosure."

46. Cramer subsequently (by her attorney Allen Counard) on January 24, 1972, filed a Motion for Summary Judgment "as to Count I," based on the argument that no default in a condition had been shown, and that even if there was a default in escrow such default was a default in a mutual covenant.

47. On February 7, 1972, a Michigan District Court Judge sitting as a Circuit Court Judge, ruled on said Summary Judgment, finding against Cramer (by attorney-Allen Counard) and granting a complete summary judgment to Metropolitan. His findings were predicated on the following mis-interpretations, mis-understandings or mis-statements of facts:

(a) The escrow clause is in fact and as a matter of law a "condition";

(b) Both parties admit there was a deficiency in said escrow account;

(c) That $619.05 was given as a down payment by Cramer (despite there was no testimony whatsoever; and $619.05 was, in fact, the closing costs which included a substantial sum in escrow; and Cramer had paid a down payment of $2,450.00 in addition

in addition to said "closing costs")

(d) "Escrow is the way of life; I am only going by the testimony here on the record that at the time of the foreclosure the escrow fund was deficient" and said Judge reinforced his statement with "the court heard this testimony"; (despite there was no testimony whatsoever) and

(e) "The Court of Appeals in reversing this case only sent it back to be granted a Jury Trial at the discretion of the Court".

(f)"Nothing was due and unpaid at the time of foreclosure. There was a surplus of the escrow account."

48. The actual figures used by Metropolitan in the Sheriff's Bidding Statement at the subsequent sale on October 1, 1968, were:

Principal balance	$12,041.91
Less credit (escrow)	2.82
Total	$12,039.09

a markedly different figure than the amount $12,519.37 stated in the "Notice of Mortgage Sale" published, first insertion on May 23, 1968; and a figure which on its face underscores and reinforces Cramer's claim that there was no deficiency in escrow at the time of the foreclosure, nor at the time of the Sheriff's sale of said mortgaged property.

49. Further, Metropolitan utilized $30.10 of mortgagor's escrow moneys to pay MGIC insurance, but which MGIC did not receive until in December 1968, considerably after the Sheriff's sale of October 1, 1968; and therefore, the credit balance in escrow should have been $32.92, instead of $2.82, on the Sheriff's Bidding Statement, which, in turn,

should have been applied in reduction of the principal balance to $12,008.99 as the accurate amount owing as a debt. Again, the $12,008.99 is a markedly different figure than the $12,519.37 stated in the published "Notice of Mortgage Sale" as of May 23, 1968.

50. There was no testimony whatsoever as relates to down payment.

51. There was no testimony whatsoever as relates to a "deficiency."

52. There was no testimony and/or evidence whatsoever, either supportive or unsupportive of the foreclosure.

53. There was a subsequent appeal to the Michigan Court of Appeals, (claim was filed April 17, 1972) and the Court of Appeals affirmed the trial court except as to Count IV, Breach of Fiduciary Duty, which was remanded back to the Circuit Court for trial.

54. Trial was held on said Count IV only, in which Cramer appeared in pro per and the jury found the Defendants (Metro) "not guilty" and a judgment of no cause of action was entered on said Count IV.

55. The matter was subsequently appealed to the Michigan Supreme Court, and the findings in the case to date were affirmed on October 6, 1977, Cramer v Metropolitan, et al, reported at 401 Mich 252.

56. Said Michigan Supreme Court decision recites, mainly, "She refused to pay escrow. * * * The foreclosure was licit." However, actually, and in fact, by sequential dates involved, Cramer refused to pay "escrow"

after the foreclosure date of May 23, 1968, not before, inasmuch as her check for the current installment for May which was paid to Metropolitan on May 29, 1968 (within the 15-day forebearance period of the mortgage note) was the first payment which did not include "escrow" and was for principal and interest only, in the amount of $103.81, but which Metropolitan never returned said check to Cramer. They are keeping the said check dated May 29, 1968, in the amount of $103.81 as evidence, probably, to try to justify their foreclosure commenced on or/before May 23, 1968, which does not justify anything, except that Cramer's contention is that she was justified in and had the right to refuse to pay "escrow" because of the mishandling by Metropolitan of said "escrow," and because of Metropolitan operating their "estortion" racket of using threats and leverage of foreclosure to obtain excessive escrow moneys and failing to pay the mortgagor's liabilities timely with said mortgagor's "escrow" moneys.

57. At the jury trial on Count IV, Breach of Fiduciary Duty, shown in the Appendix on Appeal, Volume II, at 562a (T-195 and 196) where Defendant (Metropolitan) testified as to said "escrow" funds, in August 1973, it shows:

"Q. So you consider you have some flexibility as to paying those taxes?

"A. Yes. We have a great deal of flexibility.

"Q. A great deal?

"A. Forty-five, sixty days.

"Q. But you don't have two years, do you?

"A. We have two years, yes.

"Q. You think you have two years. Do you think you can hold somebody else's money for two years when the contract says that these amounts are to be paid when due and you think you can hold them for two years?

"A. The language in the mortgage speaks for itself. If it says "when due" we are supposed to pay them when due but nobody is going to turn us away from the (State or County or City) treasurer's office if we go in a year and a half later."

58. Two rehearings were denied by the Michigan Supreme Court, on December 15, 1977 and February 1, 1978.

59. Cramer, in pro per, filed her Petition for Writ of Certiorari to the Michigan Supreme Court in the Supreme Court of the United States in time for the October 1977 term, Docket No. 77-1558, on April 27, 1978, which was denied June 12, 1978 for the reason that fraud is alleged.

60. Cramer has at various times, during her foregoing litigation history, been represented by counsel, but the majority of the time she was IN PRO PER, including most Motion appearances, the actual trial on Count IV of her Second Amended Complaint, appearances before the Michigan Court of Appeals, and her appeal to the Michigan Supreme Court.

61. It is Cramer's position that she has been denied Due Process of Law and denied the equal protection of the law, systematic-

ally and continuously throughout the eleven (11) years her "case" was before Michigan Courts, in that in all of that time (with the exception of the trial she had on – Count IV of her Second Amended Complaint -- in which "trial" she was hampered by the fact that said Count IV was interrelated to each of the other Counts in her Complaint, and, therefore, she could not adequately or properly prove the merits of it without reference to the other Counts, which privilege she was denied; and in which she was further hampered by being In Pro Per); Cramer was never allowed to offer any evidence or testimony which would have proved that Metropolitan had no basis for the foreclosure and, more glaring, no evidence or testimony was at any time offered by the Defendants- – Metropolitan to support their repeated assertion that:

"After closing, Mrs. Cramer commenced payment of principal, interest and escrow but thereafter continually failed and refused to make escrow payments as required by paragraph 2 of the Mortgage. Subsequent to her default and her failure to make the May 15, 1968 payment in a timely fashion, – Metropolitan commenced foreclosure by advertisement pursuant to the power of sale in the Mortgage. When the foreclosure was commenced, Mrs. Cramer's escrow account was deficient in the sum of $401.16.", which the attorneys for Metropolitan assert in their Brief on Appeal (page 3) in the Michigan Supreme Court, but which thereto said attorneys for Metropolitan have never presented evidence or testimony in support of their allegations.

62. It is Cramer's contention that this matter could have been simply and effectively

resolved at any time by the cimple expedient of looking at the figures involved. (See paragraphs 3, 11, 15, 18 and 48 herein, Preamble or Introductory Statement). It would have been necessary, of course, for there to have been a day in court and for both sides to have presented "their figures"; but in so doing a clean, clear, factual determination would very simply have been made and endless time, expense and aggravation could have been avoided.

63. It is Cramer's position that the action of the Michigan Supreme Court in affirming the lower court determination in the prior action, Cramer v Metropolitan et al, 401 Mich 252, constitutes the unconstitutionally deprivation of rights, privileges, opportunities and/or guarantees, under color of State law and common-law policy, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and that State action or exertion of state power is involved; and further, State action is involved under color of Michigan Foreclosure by Advertisement Statute, MCLA 600.3201 et seq., MSA 27A.3201 et seq., and more specifically, with reference to "any condition of such mortgage".

64. Further, it is Cramer's contention that the Michigan Supreme Court, reported at 401 Mich 252, failed to apply the cardinal rule where the entire contract must be considered to arrive at the proper interpretation of contracts and to ascertain the intention to be gathered from the whole instrument, and, instead, that Court grossly obviated the intention of the restrictive covenant (in a mortgage) which precludes, prevents, prohibits and inhibits a mortgagor from paying her own liabilities of taxes and insurance where, after the mortgagee

fails to adhere to the implied provisions of paying taxes and insurance with the "escrow" funds collected, then the mortgagor (Cramer) would be in breach of said restrictive covenant by complying with governmental laws if Cramer paid said taxes and insurance when Metropolitan failed and neglected to pay with said "escrow" funds.

65. Alternative, as a mutual covenant Cramer's contention is that the mortgagee-Metropolitan would be required to expend funds for the payment of taxes and insurance which if the expenditure was a greater sum than the "escrow" credit balance, and resulting in a debit balance in the escrow account, it is only that debit balance which can be termed as a "deficiency" which the mortgagee is entitled to foreclose upon and accelerate the principal-debt balance together with the debit balance in escrow if the mortgagor failed to reimburse the mortgagee for said debit balance "deficiency," for the "escrow" funds. But, here, the mortgagee-Metropolitan says they are bound to do nothing with the "escrow" funds after collecting said "escrow."

66. The Michigan Supreme Court members suffer with a mental disability, obviously, in the decision reported at 401 Mich 252, and where in considering only partial of two (2) paragraphs in a contract consisting of nine (9) paragraphs, the Members of the Michigan Supreme Court cause irreparable injury "in restraint of commerce (money)" where the collector of "escrow" (mortgagee) does not pay taxes and insurance voluntarily while inhibiting the mortgagor from paying taxes and insurance. The decision of the Michigan Supreme Court, reported at 401 Mich 252 borders on insanity.

67. After the U. S. Supreme Court denied Cramer's Petition for Writ of Cert on June 12, 1978, she commenced this new action on July 14, 1978, in the Wayne Circuit Court, and Cramer applied for Leave to Appeal in the Michigan Supreme Court on (1) Order Setting Aside Default of Co-Defendant Allen Counard (Cramer's former attorney) and (2) Accelerated and/or Summary Judgment granted to Metropolitan and their attorneys as Defendants and Co-Defendants. The Michigan Supreme Court denied Leave to Appeal on February 7, 1979, together with motions denied. On February 27, 1979, Cramer filed Motion for Reconsideration of Application for Leave to Appeal and Motion to reverse, void or correct prior defective decision (reported at 401 Mich 252) and on May 3, 1979 the Court entered its Order denying all motions "because it does not appear that the questions presented should be reviewed by this Court."

68. In the interim, on February 26, 1979, Cramer hired Attorney-William R. McFadden who filed two (2) separate motions for oral argument in the Michigan Supreme Court, the second motion having been filed on May 23, 1979, and which is still pending together with Attorney-McFadden's Motion for Withdrawal as Attorney for Plaintiff (Cramer). Attorney-McFadden refused to present anything "alternatively" to the Michigan Supreme Court and refused to prepare and file pleadings in the Federal court on anything, except a "mutual covenant" and which became a glaring and serious defect and dispute between McFadden and Cramer, and currently Attorney-McFadden is and has been withholding all of Cramer's papers, documents and copies of pleadings which he refuses to relinquish, even when Cramer needs them for timely preparation and filing in the Federal

court, and where Attorney-McFadden apparently is withholding Cramer's file as a means of leverage to prevent the preparation and filing of pleadings timely in the Federal court, unless Cramer allows said Attorney-McFadden to voluntarily withdraw or that the Michigan Supreme Court enters an Order for Withdrawal of Attorney-McFadden. Therefore, Cramer is severely handicapped now in preparation of these pleadings for filing in the Federal Court. However, the Complaint and motions and other matters are as follows:

COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, (Intervention) AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY

Now comes Plaintiff Virginia Cramer, in pro per, and for her cause of action shows unto this Honorable Court as follows:

1. JURISDICTION AND VENUE

1.1 Your federal plaintiff (defendant in wrongful foreclosure) is a natural born citizen of the United States, maintains residence in Dearborn Heights, Michigan, and has resided in the State of Michigan, County of Wayne, for more than sixty (60) years, continuously. She is not represented by counsel, nor has she been able to obtain competent counsel, and she has never had her day in court in the State courts on said foreclosure matter, although at intervals she had engaged the services of three (3) different lawyers (who are now named as co-defendants, as more fully set forth herein).

1.2 That the defendants Metropolitan Savings and Loan Association a/k/a Metropolitan Federal Savings and Loan Association is

or was a United States Corporation and together with its officers named, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, have its principal place of business located in the City of Farmington, Oakland County, Michigan, the said named officers at all times pertinent hereto.

1.3 That the Co-Defendants named, McClintock Donovan Carson & Roach, James I. McClintock, William P. Thorpe and Michael Doelle are the law firm and individual attorneys representing and/or did represent the defendants Metropolitan Savings and Loan Association a/k/a Metropolitan Federal Savings and Loan Association involving primarily the wrongful foreclosure and incidental and consequential matters, have their offices located in the City of Detroit, State of Michigan, at all times pertinent hereto.

1.4 That the Co-Defendants named, Abel Selburn, Allen Counard and William R. McFadden, all of whom have their offices located in the County of Oakland, State of Michigan, are the three (3) individual attorneys whom your Plaintiff (defendant in wrongful foreclosure action) engaged the services of, specifically, as to said foreclosure matter, and they are at all times pertinent hereto.

1.5 That the Co-Defendant Federal Home Loan Bank Board and by its Director and/or Official and/or Officer in Charge and created by Act of Congress, have their place of business located in Washington, District of Columbia, where the federal regulations are promulgated, pursuant and by virtue of the Home Owners Loan Act of 1933, 12 USCA 1421, et seq. 47 Stat. 725; 12 USCA 1461 et seq., 48 Stat. 127, at all times pertinent hereto.

1.6 That the Co-Defendants Justices of the Michigan Supreme Court, Mary S. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., have their offices of place of business located in/and about Lansing, State of Michigan, at all times pertinent hereto .

1.7 Federal jurisdiction is founded on the extant controversy of a civil rights question and actual controversy on the enforcement and application of MCLA 600.3201 et seq., MSA 27A. 3201 et seq., entitled "Foreclosure by Advertisement" statute, and the United States Constitution, Amendments Fifth and Fourteenth, and the Michigan Constitution of 1963, Art. 1, Sec. 17.

(a) U.S. Constitution, Amendment Five, which provides, in part that "no person shall be * * * deprived of * * * property, without due process of law; nor shall private property be taken for public use, without just compensation."

(b) U.S. Constitution, Amendment Fourteen, which provides in part that "No State shall make or enforce any laws which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

(c) 12 USCA 1454, et seq. Purchase and sale of mortgages, residential mortgages; conventional mortgages, terms and conditions of sale or other disposition, authority to enter into, perform, and carry out transactions.

(d) 12 USCA 1461, et seq., providing for the establishment and regulation of Federal Savings and Loan Associations, local mutual thrift institutions.

(e) 12 USCA 1701, et seq., providing for the "National Housing Act" wherein the authority for and regulation of government insured mortgages is contained.

(f) 42 USCA 1983 providing as follows: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

(g) 42 USCA 1985, et seq., providing recovery of damages occasioned by injury or deprivation, against any one or more of the conspirators in conspiracy to interfere with civil rights, obstructing, or defeating, in any manner, the due course of justice, with intent to deny the equal protection of the laws, or to injure any citizen or his property for lawfully enforcing, or attempting to enforce the right of any person to the equal protection of the laws.

(h) 28 USCA 2201, et seq. (Chapter 151) Declaratory Judgments, providing for creation of remedy.

(i) 15 USCA Section 1, et seq., providing for punishment of fine or imprisonment for engaging in contracts, combinations or otherwise, or conspiracy, to monopolize

(j) 28 USCA 1443 providing for removal of civil rights cases, civil action, to the district court of the United States, commenced in a State court where it is pending:

(1) Against any person who is denied or cannot enforce in the court of such State a right under any law providing for the equal civil rights of citizens of the United States, * * * .

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

(k) 28 USCA 1343, providing for original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in Section 1985 of Title 42; * * * for redress of deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons * * * .

1.8 Your federal petitioner-plaintiff (defendant in wrongful foreclosure action) claims federal jurisdiction and intervention under the above enumerated and various provisions, and 28 USCA 2284, (2) action against a State, or officer or agency thereof.

1.9 That this Court has jurisdiction of this matter by virtue of the Federal questions involved.

1.10 The pending case presents an actual controversy of irreparable injury and a showing of bad faith enforcement of MCLA 600.3201 et seq., MSA 27A.3201 et seq., entitled "Foreclosure by Advertisement" involving a question on the constitutionality of said state statute on its face or as applied, together with the State common-law policy of private right to contract (mortgage covenant and agreement involved herein).

2. CAUSE OF ACTION and FEDERAL INTERVENTION

2.1 That the Plaintiff herein, on July 29, 1963, did borrow from the Defendant-Metropolitan Federal Savings and Loan Association, the sum of Sixteen Thousand Five Hundred ($16,500.00) Dollars, with interest thereon at the rate of five and three-quarters (5-3/4%) per cent per annum, and seven (7%) per cent per annum during any period of default.

2.2 That in connection with said loan, Plaintiff signed a "Mortgage Note" and a "Mortgage Agreement," granting Defendant-Metropolitan a mortgage on certain property located in the City of Dearborn Heights, Wayne County, Michigan.

2.3 That subsequently, to wit: on May 23, 1968, Defendant-Metropolitan instituted foreclosure proceedings by publishing a "Notice of Mortgage Sale" in the Detroit Legal News, without good cause and with willful intent to damage your Plaintiff, as more fully set forth herein.

2.4 That your Plaintiff insituted a suit in Wayne County Circuit Court to enjoin the Defendant-Metropolitan from proceeding with said foreclosure, that being her only remedy at that time.

2.5 That your Plaintiff was denoted as "Plaintiff" in those proceedings as well as in these proceedings, as a procedural quirk, inasmuch as she is actually, and in reality, a defendant, defending herself from the legal-illegal action instituted by the Defendant-Metropolitan as mortgagee.

2.6 That your Plaintiff incorporated herein by reference the pleadings of that cause, being Wayne County Circuit Court No. 115-792, including the Appellate proceedings therein had. (See Preamble herein.)

2.7 That your Plaintiff, throughout said proceedings, was denied certain rights guaranteed by the United States Constitution and the laws of the United States, including, but not limited to, deprivation of due process of law and denial of the equal protection of the law in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

3. WRONGFUL FORECLOSURE, SLANDER OF TITLE

3.1 Your Plaintiff realleges each and every paragraph of the foregoing as though each paragraph were restated verbatim herein.

3.2 That during the period of time from the inception of the mortgage to the date of the foreclosure, your Plaintiff diligently performed her covenant, the performance of which was to pay "escrow" funds to the Defendant-mortgagee (Metropolitan) and which

said Plaintiff-mortgagor did pay each and every month without fail according to the payment-cards furnished to her by said Metropolitan.

3.3 That during the period of said mortgage, prior to the foreclosure date of May 23, 1968, the defendant-Metropolitan credited your Plaintiff's account with 130 monthly installments, although by the terms of the mortgage note, only 56 payments would have been required, where Plaintiff-mortgagor had considerably paid ahead and more than she was required to pay.

3.4 That there arose a dispute between the Plaintiff-mortgagor and the Defendant-mortgagee over the handling, or mis-handling, of the escrow funds, wherein Plaintiff deposited monthly, each and every month without fail, sums of money for the payment of real estate taxes and insurance.

3.5 That the Defendant-Metropolitan had consistently made such tax and insurance payments in an untimely manner, reflecting upon the standing and credit of the Plaintiff.

3.6 That your Plaintiff-mortgagor requested that she be permitted to pay said taxes and insurance directly, rather than in "escrow" funds to Defendant-Metropolitan where said mortgagee failed and refused to furnish receipts or copies of receipts to account properly for Plaintiff-mortgagor's "escrow" funds and liabilities for taxes and insurance.

3.7 That by manipulation of figures involving trickery, subterfuge, and miscalculations by the Defendant-Metropolitan's estimates, from time to time Metropolitan required "excessive" amounts (called

"cushioning" in the industry) to be deposited in said "escrow" account, contrary to the terms and conditions of the mortgage covenant and agreement, which Plaintiff disputed.

3.8 That Plaintiff's payments were due on the 15th day of each month and could be paid during the following 15-day period until the 30th day of each month without the addition of "late charges" in accordance with the terms of the mortgage note.

3.9 That while waiting for the Defendant-Metropolitan to answer her formal request to make tax and insurance payments directly (instead of by depositing "escrow" moneys), the Plaintiff, on May 29, 1968, made the May payment of principal and interest only, in the amount of $103.81, and which was the first payment, in the history of the mortgage period of almost five (5) years priorly, which did not include any "escrow."

3.10 That, subsequently, your Plaintiff discovered that the Defendant-Metropolitan had initiated foreclosure proceedings, by advertisement, on a day well prior to May 23, 1968, the date of the first insertion of the "Notice of Mortgage Sale" in the Detroit Legal News, and at a time during which the Plaintiff-mortgagor was not in default, and without first making demand or otherwise notifying Plaintiff that foreclosure proceedings would be initiated, and without first giving Plaintiff an opportunity to cure any alleged default.

3.11 That as a result of Defendant-Metropolitan's illegal and im proper actions, your Plaintiff's dignity and reputation have been maliciously damaged, permanently scarred and irreparably injured; that your Plaintiff has suffered damages in that she was forced to remortgage her property, at

a higher interest rate and together with "foreclosure costs and attorney fees" and additional closing costs for the remortgage; that your Plaintiff has suffered damages in that she has been forced to expend large sums of money for attorney fees, court costs and other litigation expenses involved in defending hereself against the illegal actions of the Defendant-Metropolitan and their attorneys, slandering title of plaintiff's property.

4. ACTUAL CONTROVERSY - STATE ACTION INVOLVED

4.1 The actual controversy arises under color of State Statute, MCLA 600.3201 et seq., MSA 27A.3201 et seq., entitled "Foreclosure by Advertisement."

> Sec. 3201 Foreclosure of mortgages containing power of sale;right
>
> "Every mortgage of real estate, containing therein a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner hereinafter specified." (emphasis added)
>
> Sec. 3204 "To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure, it shall be requisite:
> (1) That some default in a condition of such mortgage shall have occurred, by which the power to sell became operative; * * * ." (emphasis added)

4.2 The Defendant-Metropolitan and their attorneys are requiring your Plaintiff to defend herself against an illegitimate charge.

4.3 The Courts should not require your Plaintiff to defend herself against an illegitimate charge.

4.4 State action (exertion of state power), in violation of the Fourteenth Amendment to the U. S. Constitution, is involved by application of "in any condition" as to said "escrow" moneys, legislatively, judicially, and by executive action in the Sheriff's sale, as unconstitutional action under color of law.

4.5 That application of the "Foreclosure by Advertisement" statute relative to "escrow" moneys as a "condition" denies - the plaintiff-mortgagor the equal protection of the law and is unconsitutional action under color of state law; and that, even if your Plaintiff-mortgagor did refuse to pay escrow prior to the publication of "Notice of Mortgage Sale" the foreclosure by advertisement statute, as applied, was unconstitutional action and the foreclosure was illegal.

4.6 That your Plaintiff-mortgagor was deprived of an unquestionably guaranteed right to pay her own liabilities for taxes and insurance, was a denial of protection from unconstitutional action under color of state law, and in violation of the Fourteenth Amendment of the United States Constitution.

4.7 There is no time limit on attacking a void judgment, "voidable" on its face as abridging rights guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution, and the Michigan Supreme Court decision reported at 401 Mich 252 should be voided.

4.8 That the Defendant-Metropolitan and their attorneys are the wrongdoers who foreclosed the mortgage as a means of extorting Plaintiff's own money for the purpose of utilizing said mortgagor's money for the Defendant-mortgagee's own benefit, not to pay taxes or insurance since no taxes were assessed or billed; no insurance was due; nothing was due and nothing was unpaid; there was a surplus credit balance in her "escrow" account; there was no "deficiency."

5. WILLFUL AND MALICIOUS TORT

5.1 Plaintiff realleges paragraph 1.1 through 4.8 incorporated by reference herein of Counts 1 through 4 as though each paragraph were restated herein.

5.2 That your Plaintiff-mortgagor alleges that the actions of the Defendant-Metropolitan and their attorneys were willful and malicious, with intent of malice, and were committed with the express intent of doing harm to your Plaintiff.

5.3 That pursuant to the provisions of 42 USCA 1983,

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit at equity, or other proper proceeding for redress."

That pursuant to the provisions of 28 USCA

1343,

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege of immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, * * * .

5.4 That the Defendants-Metropolitan and their attorneys, and each of them, had knowledge that they wrongfully foreclosed the mortgage where Plaintiff had an exemplary payment record; that the Defendants-Metropolitan and their attorneys, co-defendants herein, failed to prevent and failed to aid in the preventing of said wrongs, as co-conspirators, and had knowledge of the occurrences and power to prevent, but were

committed with the intent of malice and doing harm to your Plaintiff.

6. FRAUD, CONCEALMENT AND DECEPTION - ATTORNEY MALPRACTICE

6.1 Plaintiff realleges paragraph 1.1 through 5.4 incorporated by reference herein as though each paragraph were restated verbatim.

6.2 That co-defendant Abel Selburn knew of the damage and harm occurring against Plaintiff, and said injury to her person and property would continue to occur, when Plaintiff engaged the legal services of said attorney-Abel Selburn and which he did nothing to prevent the occurrence of damage and harm to Plaintiff.

6.3 That Plaintiff hired attorney-Selburn at almost the beginning of the foreclosure action by Defendants-Metropolitan, to wit: in August, 1968, and said attorney-Abel Selburn had the knowledge and means and power to prevent the damage and harm at the beginning of said occurrence.

6.4 That attorney-Abel Selburn abandoned the case in fraud of his client, Virginia Cramer, and failed and neglected to prevent damage and harm to said client, Plaintiff herein.

6.5 That by fraud and deceit, attorney-Abel Selburn led Plaintiff-Cramer to believe that he was acting on behalf and in her best interests, when, in fact, attorney-Abel Selburn neglected and deliberately failed to act in the interests of client-Cramer.

6.6 That after almost eighteen (18) months had elapsed after Plaintiff-Cramer had

hired said attorney-Abel Selburn, she discovered that said attorney-Abel Selburn had filed no pleadings in the Court in the prior action involving said mortgage foreclosure on Plaintiff's property.

6.7 That on/or about April or May 1970, Plaintiff engaged the services of said attorney-Allen Counard, in said prior action Wayne Circuit Court No. 115-792.

6.8 That said attorney-Allen Counard was the attorney of record for the Plaintiff Virginia Cramer from about May 1970 through and including about March 1972, in said prior action.

6.9 That said attorney-Allen Counard, herein, was negligent and failed to investigate facts and law in said matter, and violated Canons of Professional Responsibility, as follows:

DR 6-101 Failing to Act Competently

(A) A lawyer shall not:

(1) Handle a legal matter which he knows or should know that he is not competent to handle, without associating with him a lawyer who is competent to handle it.

(2) Handle a legal matter without preparation adequate in the circumstances.

(3) Neglect a legal matter entrusted to him.

DR 6-102 Limiting Liability to Client

(A) A lawyer shall not attempt to exonerate himself from or limit his liability to his client for his personal malpractice.

DR 7-101 Representing a Client Zealously

(A) A lawyer shall not intentionally:

(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law * * * .

(2) Fail to carry out a contract of employment entered into with a client for professional services * * * .

(3) Prejudice or damage his client during the course of the professional relationship, * * * .

DR 7-102 Representing a Client Within the Bounds of the Law

(A) In his representation of a client, a lawyer shall not:

* * *

(2) Knowingly advance a claim * * * that is unwarranted under existing law, * * *.

(B) A lawyer who received information clearly establishing that:

* * *

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

DR 7-106 (C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has not reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

6.10 That the said co-defendant, attorney-Allen Counard, was negligent and failed to investigate facts and law in said matter involving an Order entered on September 27, 1968, in said prior action, thereby violating DR 6-101 (A) (1), (2) and (3).

6.11 That the said attorney-Allen Counard was negligent and knew or should have known that the defendants-Metropolitan and their attorneys (co-defendants herein), in violation of statutory provisions MCLA 600.6052, MSA 27A.6052; MCLA 600.2431, MSA 27A.2431; and MCLA 600.3216, MSA 27A.3216 had conducted a mortgage foreclosure sale on October 1, 1968, through the Sheriff's office, and thereby co-defendant Allen Counard violated DR 7-101 (A) (1), (2) and (3).

6.12 That co-defendant-attorney Allen Counard had failed and neglected to prepare and file proper pleadings to litigate said statutory violations of defendants and co-defendants herein, in the Wayne Circuit Court and to allow for appeal as to said statutory violations in a wrongful mortgage foreclosure action, and thereby co-defendant Allen Counard violated canons of professional responsibility DR 7-101 (A) (1), (2) and (3).

6.13 That instead of investigating facts and law in said prior action 115-792, co-defendant Allen Counard, took a matter on appeal as to the filing of a Second Amended Complaint, without taking into account the Order entered dated September 27, 1968, and the violations of statutory provisions thereunder, and thereby attorney-Allen Counard violated DR 7-102 (A) (2), where the Second Amended Complaint was filed and could not be heard unless the wrongful foreclosure were set aside under Michigan

case law.

6.14 That on/or about August 1971, co-defendant Allen Counard failed and neglected to investigate facts and law, where in pre-trial proceedings in the Wayne Circuit Court a judge's pretrial statement indicated that "this is a suit to set aside a foreclosure" and said co-defendant Allen Counard failed and neglected to prepare and file pleadings to set aside the foreclosure, and thereby violating DR 6-101 (A) (1), (2) and (3), DR 6-102 (A), DR 7-101 (A) (1), (2), and (3), of the canons of professional responsibility.

6.15 That on/or about August 1971, co-defendant Allen Counard failed to investigate facts and law, and regarding an alleged "deficiency" in plaintiff's escrow account involving said wrongful foreclosure and where defendants and co-defendants (Metropolitan) did not show any such "deficiency" in the Sheriff's Bidding Statement for said mortgage sale, thereby said sale constituting fraud, concealment or deception, and thereby co-defendant Allen Counard violated DR 6-101 (A) (1), (2) and (3), DR 7-101 (A) (1), (2) and (3), of the canons of professional responsibility.

6.16 That on/or about May 1970 through August 1971, co-defendant Allen Counard failed and neglected to file with the court proper pleadings to set aside the foreclosure and to litigate an alleged "deficiency" on wrongful foreclosure, where there was no such "deficiency" as fraudulently and deceptively claimed by the defendants (Metropolitan) and co-defendants, their attorneys, herein, and thereby co-defendant Allen Counard violated DR 7-101 (a) (1), (2) and (3) of the canons of professional responsibility.

6.17 That throughout the period of time, from about April 1970 through March 1972, co-defendant Allen Counard failed and neglected to file proper pleadings with the court to set aside a wrongful foreclosure, and instead litigated the matter of a covenant and "even admitting a deficiency", where there was no such "deficiency" and defendants and co-defendants had ultimately claimed no such "deficiency" in the Sheriff's Bidding Statement of October 1, 1968, and thereby co-defendant Allen Counard Violated DR 7-102 (A) (2).

6.18 That during the period of February and March 1972, in matters before the Wayne Circuit Court prior action 115-792, while litigating the matter of a "deficiency" when, in fact, there was no such "deficiency" in the unwarranted foreclosure action, co-defendant Allen Counard further litigated the matter of a covenant and had failed and neglected to file pleadings to set aside the wrongful foreclosure so as to properly litigate the alleged "deficiency" and where there was no such "deficiency" as fraudulently or deceptively claimed by the defendants-Metropolitan and their attorneys, co-defendants herein, and thereby co-defendant Allen Counard violated DR 7-101 (A) (1), (2) and (3); DR 7-102 (A) (2) of the canons of professional responsibility.

6.19 That subsequently in about March 1972, plaintiff-Cramer could no longer afford to pay such attorney fees to said co-defendant Allen Counard herein, and plaintiff dismissed said co-defendant attorney-Allen Counard.

6.20 That subsequently in October or November 1977, plaintiff furnished a copy of the Michigan Supreme Court decision

dated October 6, 1977, where said Michigan Supreme Court deemed the Order of September 27, 1968, to be a judgment by execution in the Wayne Circuit Court, and that by Plaintiff "refusing to pay escrow" the foreclosure was licit.

6.21 That during the proceedings in Wayne Circuit Court there was never any testimony given or implied that "she refused to pay escrow", as fully known or should have been known by the defendants, co-defendants and co-defendant Allen Counard herein.

6.22 That, in fact, plaintiff had paid "escrow" each and every month without fail by installment payments on the mortgage covenant pertinent herein and by monthly payment cards, and plaintiff had paid additional sums for "escrow" over and above the regular monthly installment payments, as fully known or should have been known by the defendants, co-defendants and co-defendant Allen Counard herein.

6.23 That the plaintiff-Cramer, in fact, had stopped paying "escrow" to defendant-corporation Metropolitan Federal Savings and Loan after the foreclosure publication of May 23, 1968, and not before, as fully known or should have been known by the defendants, co-defendants and co-defendant Allen Counard herein.

6.24 That the said co-defendant, Allen Counard, upon receiving the copy of the Michigan Supreme Court decision of October 6, 1977, violated DR 7-102 (B) (2) by failing and neglecting to inform the Michigan Supreme Court that a fraud had been perpetrated upon said tribunal, and thereby co-defendant Allen Counard further violated DR 6-102 (2) by failing and refusing to assist your plaintiff-Cramer in matters

pertaining to said perpetrated fraud upon said tribunal.

6.25 That the said co-defendant Allen Counard, instead of informing the Michigan Supreme Court of said fraud perpetrated upon said tribunal, wrote your Plaintiff a letter refusing to represent Plaintiff, and subsequently co-defendant Allen Counard told your Plaintiff herein that she had been "screwed," and thereby again violating DR 6-102 (2) and DR 6-101 (3), of the canons of professional responsibility.

6.26 That the said co-defendant Allen Counard, litigated matters before a tribunal, in the failure and neglect to litigate the setting aside of a wrongful foreclosure, and thereby said co-defendant Allen Counard litigated matters that could not be supported by admissible evidence unless the wrongful foreclosure were set aside, and thereby said co-defendant Allen Counard violated DR 7-106 (C) (1), DR 6-101 (A) (1) (2) (3), DR 7-101 (A) (1) (2) (3), DR 7-102 (A) (2), of the canons of professional responsibility, and thereby deceiving your plaintiff.

6.27 That the aforementioned violations on the part of co-defendant Allen Counard prejudiced and damaged plaintiff in matters pertinent to said wrongful foreclosure and plaintiff seeks recovery of said damages so wrongfully incurred and sustained.

6.28 That this claim and cause of action accrues to Plaintiff-Cramer from the October 6, 1977 Michigan Supreme Court decision, reported at 401 Mich 252, and prior thereto.

7. FRAUD, CONCEALMENT OR DECEPTION - ATTORNEY MALPRACTICE McClintock Donovan Carson & Roach, Michael Doelle and William P. Thorpe

7.1 Plaintiff realleges paragraphs 1 through 6.28 incorporated by reference herein as though each paragraph is restated verbatim.

7.2 That co-defendants McClintock Donovan Carson & Roach was and is a law firm, previously known as McClintock Fulton Donovan & Waterman, and have their offices located in the City of Detroit, County of Wayne, State of Michigan, at all times pertinent hereto.

7.3 That defendant and co-defendant James I. McClintock was and is Chairman of the Board of Directors of Metropolitan Savings and Loan Association and was and is also the senior member of the law firm McClintock Donovan Carson & Roach, previously known as McClintock Fulton Donovan & Waterman, and he has his offices located in the City of Detroit, County of Wayne, State of Michigan, at all times pertinent hereto.

7.4 That co-Defendant Michael Doelle, at the pertinent times herein, was a member of said law firm McClintock Fulton Donovan & Waterman, in Detroit, Michigan, at all times pertinent hereto.

7.5 That co-defendant William P. Thorpe is and was a member of said law firm McClintock Donovan Carson & Roach, at the pertinent times herein, and at all times pertinent hereto.

7.6 That on May 23, 1968, said co-defendants herein, in representing James I. McClintock and Metropolitan Federal Savings

and Loan Association a/k/a Metropolitan Savings Association, defendants herein, by fraud, concealment or deception, commenced a foreclosure by advertisement against plaintiff Virginia Cramer, mortgagor, alleging "default" in a mortgage account and "deficiency" in moneys secured by the mortgage covenant and agreement.

7.7 That subsequently in prior action Wayne Circuit Court No. 115-792 on September 6, 1968, where defendant-Metropolitan Federal Savings and Loan by John C. Denyer testified as to a "shortage" and "requirements" involving "escrow" moneys as to a mortgage covenant and agreement between Plaintiff-Cramer and Defendant-Metropolitan, said co-defendant Michael Doelle, attorney at law, alleged a "deficiency" in Plaintiff-mortgagor's "escrow" account as their basis for foreclosure by advertisement in the published "Notice of Mortgage Sale" figure of $12,519.37, under date of May 23, 1968.

7.8 That co-defendants Michael Doelle and McClintock Donovan Carson & Roach on September 27, 1968, caused a fraudulent Order to be entered in the Wayne Circuit Court alleging that plaintiff-Cramer was in "default" on the mortgage covenant and agreement.

7.9 That said Order dated September 27, 1968, is absent of any date or time as to a mortgage sale.

7.10 That subsequently on October 1, 1968, co-defendants McClintock Donovan Carson & Roach and Michael Doelle caused a fraudulent Sheriff's Sale of plaintiff's property and submitted a Sheriff's Bidding Statement where there was no such "deficiency" claimed in the amount of Bid for $12,611.46, and that said amount bid did not

include any such "deficiency" as alleged previously which was defendants and co-defendants basis for foreclosure.

7.11 That the foreclosure proceedings and the Sheriff's Sale was effected by fraud, concealment or deception, for the reason that no such "deficiency" existed.

7.12 That plaintiff's mortgage payments by monthly installments were currently made during the entire term of said mortgage and plaintiff's monthly installment payments always included principal, interest and "escrow" amounts for each and every monthly installment payment, and plaintiff never failed to pay "escrow" each and every month during the term of said mortgage between Plaintiff and defendants-Metropolitan herein, prior to the foreclosure date of May 23, 1968.

7.13 That in addition to regular monthly installment payments of interest, principal and "escrow" plaintiff had paid other amounts for the escrow account separate and apart from the monthly installment payments, during the term of the mortgage, prior to the published foreclosure date of May 23, 1968.

7.14 That plaintiff's monthly installment payments were currently made through and including May 14, 1968, as shown by defendant-corporation Metropolitan Federal Savings and Loan records.

7.15 That plaintiff had paid to defendant-corporation, the following amounts for January, February, March and April, 1968, immediately prior to the foreclosure publication date of May 23, 1968:

BY PAYMENT CARDS FURNISHED BY DEFENDANT-CORPORATION		PRINCIPAL, INTEREST & "ESCROW" TOTAL AS REQUIRED BY DEFENDANTS	PLAINTIFF PAID
1968			
January	$150.00	$150.00	$238.47
February	150.00	150.00	239.75
March	154.00	154.00	245.04
April	186.00	186.00	196.17

7.16 That had there been a valid "deficiency" in the "escrow" account of plaintiff-Cramer, said Defendants-Metropolitan were bound by the conditions in the mortgage covenant to apply such excess amounts paid by plaintiff, as above shown, to cover any valid "deficiency."

7.17 That the defendant-Metropolitan alleged a "shortage of requirements" (which was not a "deficiency") as of May 10, 1968, in the amount of $401.03, and which said amount was included in the published foreclosure figure of $12,519.37, dated May 23, 1968.

7.18 That for the reason that Plaintiff's payment for May 15, 1968, was not made on said date of May 15, 1968, defendants and co-defendants herein commenced the foreclosure by advertisement on/or about May 16, 1968, and said publication first appeared under date of May 23, 1968, by fraud, deception and/or attorney malpractice.

7.19 That the terms of the mortgage note allowed Plaintiff-mortgagor to pay a current monthly payment from the 15th through the 30th of each month (fifteen-

day period) without penalty or late charge.

7.20 That the defendants' (Metropolitan) policy was to "amortize" monthly installments for the "escrow" account which was the reason that plaintiff's April 1968 payment was increased to $186.00 from the March 1968 installment of $154.00.

7.21 That the defendants and co-defendants refused to accept plaintiff's current payment made on May 29, 1968, "on account of the foreclosure," and subsequently also refused to accept payments from plaintiff for June 1968 and July 1968, "on account of the foreclosure."

7.22 That three (3) days after the entry of the Order dated September 27, 1968, in the Wayne Circuit Court civil action 115-792, the co-defendants herein effected a Sheriff's sale of plaintiff's property on October 1, 1968, in violation of MCLA 600.6052; MSA 27A.6052, and without any notice, under execution of said Order dated September 27, 1968.

7.23 That no "deficiency" is shown on the Sheriff's Bidding Statement, as priorly fraudulently and deceptively claimed by co-defendants (attorneys) herein, and thus, no such "deficiency" existed under said foreclosure action.

7.24 That the defendants and co-defendants herein had perpetrated a fraud upon the court by alleging a "deficiency" in plaintiff's escrow account, when, in fact, there was a surplus credit balance in said "escrow" account.

7.25 That the co-defendant Michael Doelle had perpetrated a fraud upon the court by alleging that Plaintiff had "refused" to pay escrow, when defendant-corporation's (Metropolitan's) records show that plaintiff had paid "escrow" each and every month without fail.

7.26 That the co-defendants, McClintock Donovan Carson & Roach and Michael Doelle and William Thorpe, herein, violated canons of professional responsibility, as follows:

DR-7-102 Representing Client Within the Bounds of the Law

(A) In his representation of a client, a lawyer shall not:

(1) * * * assert a position, conduct a defense * * * or take other action on behalf of his client when he knows or when it is obvious that such action would serve merely to * * * maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law * * *

(3) Conceal or knowingly fail to disclose that which he is required by law to reveal.

(4) Knowingly use * * * false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false.

(7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.

(2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

DR 7-106 (C) In appearing in his professional capacity before a tribunal, a lawyer shall not:

(1) State or allude to any matter that he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

7.27 That the Michigan Supreme Court, in Cramer v Metropolitan Savings and Loan Association, et al, 401 Mich 252, has based their decision on the fraud and deception of the co-defendants (attorneys) herein, to wit: "She (Plaintiff) refused to pay escrow." That the records show that Plaintiff paid "escrow" each and every month without fail, and also paid other amounts of

"escrow" to the defendant-corporation (Metropolitan), separate and apart from the monthly installment payments.

7.28 That the defendants and co-defendants herein commenced the premature, precipitous and fraudulent foreclosure on May 23, 1968, and where each and every monthly installment payment made by plaintiff-Cramer and accepted by defendant-Metropolitan included "escrow" prior to said date of May 23, 1968.

7.29 That the plaintiff's payment of May 29, 1968, did not include any "escrow" which the defendant-Metropolitan refused to accept "on account of the foreclosure" and thus, the co-defendants (attorneys) herein perpetrated a fraud upon a tribunal, namely, the Michigan Supreme Court, and in violation of DR 7-102 (A) (1), (2), (3), (4), (5), (6) (7) (8) and DR 7-102 (B) (1) and (2).

7.30 That the co-defendant Michael Doelle, together with co-defendant William P. Thorpe and Co-defendants McClintock Donovan Carson & Roach, committed and perpetrated fraud upon the court and deceived the court by concealment and fraud, and violated canons of professional responsibility DR 7-102 (A) (1), (2), (3), (4), (5), (6), (7), (8), and DR 7-102 (B) (1) and (2).

7.31 That the defendants and co-defendants never entered any testimony, proof, exhibits, or other admissible evidence to support their claim or defense that "she refused to pay escrow" and thus, by the co-defendants fraudulent statements in their brief to the Michigan Supreme Court, said entire action is and was a perpetration of fraud upon the court.

7.32 That co-defendant William P. Thorpe, in his Brief and Appendix on Appeal for Appellees, perpetrated a fraud upon the Michigan Supreme Court by his statements as follows:

> "After closing, Mrs. Cramer commenced payment of principal, interest and escrow but thereafter continually failed and refused to make escrow payments as required by paragraph 2 of the Mortgage. Subsequent to her default and her failure to make the May 15, 1968 payment in a timely fashion, Metropolitan commenced foreclosure by advertisement pursuant to the power of sale in the Mortgage. When the foreclosure was commenced, Mrs. Cramer's escrow account was deficient in the sum of $401.16 * * * ."

7.33 That co-defendant William P. Thorpe perpetrated a fraud upon the Michigan Supreme Court, when he knew that Plaintiff never refused and never failed to pay "escrow" and that Plaintiff had paid to the defendants-Metropolitan considerably more than she was required to pay by the payment cards for monthly installments as furnished by the defendant-Metropolitan.

7.34 That co-defendant William P.Thorpe perpetrated a fraud upon the Michigan Supreme Court, when he knew that defendants and co-defendants claim of a "deficiency" in "escrow" in the amount of $401.03 as their basis for foreclosure is not included in the Sheriff's Bidding Statement in the amount of $12,611.46, and therefore, no such "deficiency" of $401.03 existed.

7.35 That co-defendant William P.Thorpe perpetrated a fraud upon the Michigan Supreme Court, when he knew that the defendants

were requiring excessive "escrow" and their method of computing "escrow" is contrary to the terms and conditions of the mortgage covenant and agreement, and that said falsely claimed "deficiency" could not be claimed in the Sheriff's Bidding Statement.

7.36 That this claim and cause of action accrues to Plaintiff and results from the October 6, 1977 Michigan Supreme Court decision reported at 401 Mich 252.

8. CONSPIRATORS - OBSTRUCTIONISTS OF JUSTICE

8.1 42 U.S.C.A. 1985, et seq., provides for recovery of damages occasioned by injury or deprivation, against any one or more of the conspirators in conspiracy to interfere with civil rights, obstructing, or defeating, in any manner, the due course of justice, with intent to deny the equal protection of the laws, or to injure any citizen or his property for lawfully enforcing, or attempting to enforce the right of any person to the equal protection of the laws.

8.2 Plaintiff-Cramer (defendant in wrongful foreclosure action) engaged the services of three (3) separate attorneys, at different times, on this matter of wrongful foreclosure, the prior action and this action, as follows:

On/or about August, 1968 - Attorney Abel Selburn
On/or about April or May 1970 - Attorney Allen Counard
On February 26, 1979 - Attorney, William R. McFadden

8.3 Further, the referral service of the Detroit Bar Association, during the period of approximately two (2) years, from

about April 1972 to about sometime in 1974 kept Plaintiff-Cramer's name on file in seeking an attorney to handle this legal matter pending in the appellate courts of the State, and then said bar association wrote Plaintiff-Cramer a letter advising her that they could not locate an attorney for this matter.

8.4 That your Plaintiff realleges each and every paragraph of the foregoing Counts 1 through 8 as though each paragraph were in full restated verbatim herein.

8.5 That Plaintiff-Cramer, as mortgagor, was and is the victim in a wrongful foreclosure action, instigated and commenced in May 1968 because she had complained to the Mortgagee-Metropolitan Federal Savings and Loan Association and its officers that her "escrow" moneys for payment of taxes and insurance relating to the mortgaged real property were being mishandled when said mortgagee failed and neglected to pay taxes and insurance timely, failed and neglected to furnish receipts or copies of receipts for disbursements from "escrow" and that "excessive" amounts for "escrow" were wrongfully required, from time to time, among other things.

8.6 That Plaintiff-Cramer disputed the excessive "escrow" amounts and re-computed same, but she had never failed to pay "escrow" each and every month together with timely payments of principal and interest each and every month without fail.

8.7 That each of the attorneys she had hired on this matter, namely, Abel Selburn, Allen Counard and William R. McFadden became a deterrent and by design, with intent to defeat the due course of justice,

managed the case so that Plaintiff-Cramer would never have a day in court on said foreclosure matter.

8.8 That said attorneys, as conspirators to impede, hinder and obstruct Plaintiff's right to the equal protection of the laws, acted in their own interest and as adversaries to her cause, as more fully set forth herein.

8.9 That attorney William R. McFadden is currently withholding Cramer's papers, documents and files, and refusing to relinquish them while he also ultimately refused to prepare and complete pleadings for filing timely in the Federal court, in this matter, causing Cramer to prepare and file her own pleadings herein.

8.10 That co-defendant attorney Abel Selburn, in September 1968 and/or 1969, had sent copies of pleadings to Cramer and then, Cramer learned in February 1970 that attorney Abel Selburn had never filed any pleadings in the court in this matter, and thus, he abandoned the case in fraud of his client.

8.11 That co-defendant attorney Allen Counard either failed and neglected to investigate facts and law and/or deliberately litigated wrong issues, as his client's adversary, and in his own interest, and so that Cramer has never been heard and never allowed to be heard by any Court on wrongful foreclosure.

8.12 That the said co-defendants, attorneys Abel Selburn, Allen Counard and William R. McFadden conspired to deprive your Plaintiff due process of law with intent to deny the equal protection of the

law for the reason that they do not want mortgagors to have any rights to the equal protection of the laws.

8.13 That the said co-defendants, attorneys at law, herein, unlawfully engage in a continuing conspiracy and unlawful combination for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in the State of Michigan, and to deny Plaintiff (defendant in wrongful foreclosure action) the equal protection of the laws.

8.14 That the said co-defendants, attorneys, participated as conspirators in the violations herein alleged, and wrongfully performed acts or wrongfully omitted the performance of acts, and made statements in furtherance of participating as conspirators, in an unconstitutional manner, as obstructionists of justice, in "pari delicto" with client-Cramer's adversaries, the attorneys for the opposition, and so acting against their own client (Cramer) and for their own interests.

8.15 The overall purpose of the unlawful combination, as conspirators and obstructionists of justice, by said attorneys and lawyers named herein, is to deceive the client while the attorney is acting on his own behalf and in his own interest, contrary to the interests of the client while at the same time taking money for legal services with the intent and purpose of self-interest against the client's interest.

9. ACTUAL CONTROVERSY - FEDERAL ACTION INVOLVED

9.1 Your Plaintiff realleges each and every paragraph of the foregoing as though each paragraph were stated verbatim herein.

9.2 That the Federal Home Loan Bank Board, under 12 U.S.C.A. 1461, et seq., promulgates the federal regulations, among which are regulations 545.6-1 et seq., entitled Real Estate Loans, as applying to savings and loan associations.

9.3 That said regulations 545.6-1 et seq., set forth the provisions whereby "requirements" of one-twelfth prepaid or advance payments for taxes and assessments is met and collected by savings and loan associations as to mortgage loans.

9.4 That said provisions of regulations 545.6-1 are not applicable to insured or guaranteed loans.

9.5 That lending institutions, as to mortgage loans, such as Metropolitan Savings and Loan Association a/k/a Metropolitan Federal Savings and Loan Association collect "escrow" funds for the prepayment of taxes and insurance and other assessments whether or not the mortgage loan is insured or guaranteed, claiming that they are "bound by federal regulations" to require and maintain "escrow" accounts on mortgages granted.

9.6 That lending institutions, such as Metropolitan Savings and Loan Association a/k/a Metropolitan Federal Savings and Loan Association further claim there is no law or regulations that require said savings and loan associations to pay the taxes when due

with the "escrow" funds so collected.

9.7 That the said regulations promulgated by the Federal Home Loan Bank Board, under 12 U.S.C.A. 1461, et seq., make no provisions for said lending institutions to pay taxes on mortgaged property with the "escrow" funds so collected.

9.8 That the said lending institutions, while collecting said "escrow" funds on mortgages granted, invest and utilize said "escrow" funds in violation of 12 USCA 1464 (c), for self-dealing purposes, and by encouragement of the regulations and/or lack of regulations promulgated by the Federal Home Loan Bank Board.

9.9 That 12 U.S.C.A. 1464 (c) provides that "Such associations shall lend their funds only on the security of their savings accounts or on the security of first liens upon real property * * * . That any portion of the assets of such associations may be invested in obligations of, or fully guaranteed as to principal and interest * * * or accounts of any bank the deposits of which are insured * * * or in general obligations of any State or of any political subdivision thereof * * * .

9.10 That the loan contract on mortgages granted to savings and loan associations, with provisions as to borrowers being required to pay "escrow" funds for future payments of taxes and insurance, are absent of provisions as to enforcement of the mortgagee-lending institutions to pay taxes and insurance when due.

9.11 That the loan contract on mortgage allows the mortgagee-lending institution to

fail to pay taxes and insurance with the "escrow" funds so collected from mortgagors.

9.12 That the loan contract on mortgages granted and containing provisions as to "escrow" funds payable by mortgagors is, generally, in violation of 15 U.S.C.A. 1 et seq.

9.13 That the Federal Home Loan Bank Board, by its so-called regulations and/or lack of regulations encourages the widespread use of illegal contracts on mortgages, in violation of 15 U.S.C.A. 1, et seq.

9.14 That the Federal Home Loan Bank Board, in the absence of regulations for savings and loan associations as to collection of "escrow" funds, allows the mishandling of and self-dealing by savings and loan associations with the said "escrow" funds belonging to mortgagors.

9.15 That the Federal Home Loan Bank Board encourages the violation of the Fifth and Fourteenth Amendments to the United States Constitution whereby mortgagors being "required" to pay "escrow" funds to said Mortgagee-lending institutions are denied the equal protection of the laws and are deprived of property (escrow funds) without just compensation.

9.16 That savings and loan associations invest said mortgagors' "escrow" funds and realize a gross profit of earnings on said "escrow" funds without paying just compensation to the mortgagor as owner of said "escrow" funds.

9.17 That the Federal Home Loan Bank Board encourages the violations of the Fifth and Fourteenth Amendments to the United States Constitution, in favor of the

mortgagee-lending institution and against the mortgagor, by encouraging the collection of said "escrow" funds in denial of the equal protection of the law to the mortgagor as owner of said "escrow" funds.

9.18 That the Federal Home Loan Bank Board, by such encouragement, is thereby engaged in a conspiracy together with the saings and loan associations, by unlawful combination, in violation of 15 U.S.C.A. 1, et seq., and in violation of the Fifth and Fourteenth Amendments to the United States Constitution.

9.19 That your Plaintiff (mortgagor-defendant in wrongful foreclosure) complained to Metropolitan Federal Savings and Loan Association about their failure to pay her taxes and insurance when due, and Plaintiff complained to said mortgagee about requiring "excessive" escrow moneys, all contrary to and in violation of the terms and conditions of the mortgage contract, and Plaintiff asked to pay her own liabilities for taxes and insurance rather than to pay "escrow" moneys for the defendants (Metropolitan) to mishandle.

9.20 That your plaintiff never failed to pay "escrow" funds to defendants (Metropolitan) in accordance with their requirements by the payment cards for monthly installments, which said payment cards were furnished to mortgagor-Virginia Cramer by said mortgagee-Metropolitan, prior to the foreclosure action.

9.21 That separate and apart from the said payment cards for monthly installments, the mortgagee-Metropolitan further required "excessive" escrow funds in addition to the monthly amounts included in the total shown on said payment-cards which included principal, interest and "escrow".

9.22 That Plaintiff (defendant in wrongful foreclosure) disputed and recomputed the "excessive" amounts required by mortgagee-defendants-Metropolitan.

9.23 That defendants (Metropolitan) foreclosed on the mortgage loan during the period of 15-day forbearance by the terms of the mortgage note whereby no late charges would be applicable, on "escrow" moneys only and accelerated the debt.

9.24 That the Sheriff's Sale Bidding Statement showed no "deficiency" in "escrow", and instead showed a credit balance in "escrow" which the defendants-Metropolitan applied in reduction of the principal balance.

9.25 That the Defendants-Metropolitan (Plaintiff in wrongful foreclosure by advertisement) claim that the basis of their foreclosure was because of federal regulations requiring them to require "escrow" on all home mortgages granted.

10. INJUNCTIVE RELIEF AGAINST MICHIGAN SUPREME COURT JUSTICES

10.1 Your Plaintiff (defendant in wrongful foreclosure) realleges each and every paragraph of the foregoing as though each paragraph were restated verbatim herein.

10.2 That the Michigan Supreme Court justices rendered their decision in Cramer v. Metropolitan Federal Savings and Loan et al, reported at 401 Mich 252 based on false facts.

10.3 That said false facts, mainly, are as follows:

"Plaintiff admits in her brief that she did not maintain a current escrow account. * * * Defendants complied in all respects with the requirements of the statute. * * * Plaintiff obtained a temporary restraining order, which was subsequently dissolved after the court determined that plaintiff was in default of her mortgage. * * * Plaintiff finally stopped the escrow payments, * * *. We next consider whether or not plaintiff's refusal to make timely escrow payments for taxes and insurance constituted a "default * * * in any condition of (the) mortgage," allowing foreclosure by advertisement pursuant to MCLA 600.3201; MSA 27A.3201. * * * We are convinced that under the terms of the contract before us, plaintiff has defaulted on a condition. By refusing to pay monies into escrow, plaintiff failed to perform a covenant the performance of which was a condition of the contract, * * * Here plaintiff refused to make the payments. * * *"

10.4 That your Plaintiff (defendant in wrongful foreclosure) consistently maintained that she was not in default of the terms and conditions of the mortgage covenant and the mortgage note, for the reason that she never failed to pay "escrow" and she did pay "escrow" to the mortgagee-Metropolitan each and every month without fail.

10.5 That each and every monthly installment payment made to mortgagee-Metropolitan included "escrow" and that Plaintiff further paid additional amounts in "escrow" separate and apart from the monthly installments.

10.6 That the Michigan Supreme Court members took judicial notice of the allegations of Defendants-Metropolitan and their attorneys where no proof, no evidence and no testimony was ever presented as to "plaintiff refused to make the payments."

10.7 That the allegations of the Defendants-Metropolitan and their attorneys (also co-defendants herein) were presented as a perpetration of fraud upon the Michigan Supreme Court where in the absence of litigating "she refused to pay escrow" in the trial court, the attorneys for defendants-Metropolitan utilized that theory of "she refused to pay escrow" as a diversion and to conceal their own misconduct of failing to pay taxes and insurance when due, and further requiring "excessive" escrow moneys to fatten the coffers of mortgagee-lending institution for self-dealing purposes.

10.8 That the allegations of "she refused to pay escrow" are false, and are a fraud perpetrated upon the court by the defendants-Metropolitan and their attorneys (named co-defendants herein) and whereby Metropolitan's records of Plaintiff's account and Plaintiff's cancelled checks endorsed by Metropolitan show that Plaintiff-Virginia Cramer, as mortgagor, never failed to pay "escrow" prior to the foreclosure and "Notice of Mortgage Sale."

10.9 That, in fact, Plaintiff (defendant in wrongful foreclosure) did pay "escrow" each and every month without fail and refused to pay "escrow" after the commencement of the foreclosure and after the "Notice of Mortgage Sale" was published.

10.10 That your Plaintiff (defendant in

wrongful foreclosure) has been systematically, continuously and consistently denied due process of law and denied the right or opportunity to be heard.

10.10 (a) That the Michigan Supreme Court members took judicial notice and wrote their decision based on said judicial notice of mere allegations contained in the brief on appeal submitted by Defendants-Metropolitan and their attorneys, and which said allegations are, in the main part, false; and which said false allegations were not litigated in the lower courts prior to the decision of the Michigan Supreme Court rendered and reported at 401 Mich 252.

10.11 That the Michigan Supreme Court members have allowed a fraud to be perpetrated upon the court and also, in refusing to correct their defective decision reported at 401 Mich 252 said Michigan Supreme Court members are condoning fraud.

10.12 That the Michigan Supreme Court members have no authority or power, in any event, to condone fraud.

10.13 That the Michigan Supreme Court members knew and had knowledge of the contents and provisions of the mortgage contract herein involved, and knew and had knowledge that said contract prohibits and inhibits a mortgagor from paying taxes and insurance while being "required" to pay "escrow" moneys to the mortgagee.

10.14 That the Michigan Supreme Court members have knowledge and did have knowledge that said mortgage contract is designed with the intent of denying the mortgagor the equal protection of the laws

and in violation of the Fourteenth Amendment to the United States Constitution.

10.15 That the Michigan Supreme Court members have knowledge and did have knowledge that a contract cannot be disclaimed in part and enforced in part.

10.16 That the Michigan Supreme Court members have knowledge and did have knowledge that the entire contract must be considered to arrive at a proper interpretation of the intent of the contract, and that said Michigan Supreme Court members considered only a partial of two (2) paragraphs of said contract, whereas the said contract actually is comprised of nine (9) paragraphs in addition to the terms of the mortgage note.

10.17 That the Michigan Supreme Court members have a duty to declare an illegal-contract as being illegal, without being asked to do so.

10.18 That the Michigan Supreme Court members knew of and did have knowledge of that your plaintiff (defendant in wrongful foreclosure action) had an exemplary payment record and 'was well ahead of her repayment schedule" and that the Mortgagee-defendants control the allocation of principal, interest and "escrow" upon receipts of payments from the mortgagor.

10.19 That by relying on only the brief submitted by the Attorneys for the defendants-Metropolitan, and by ignoring certain contents of Plaintiff's brief, as submitted to the Michigan Supreme Court, in prior action No. 115-792 and No. 57215 and reported at 401 Mich 252, the Michigan Supreme Court members acted as a voluntary advocate

of the misconduct of the defendants-Metropolitan by their failure to pay taxes and insurance when due after receiving the "escrow" moneys paid by the mortgagor.

10.20 That the Michigan Supreme Court members have shown in their decision reported at 401 Mich 252 that they have absolutely no regard for the security of the State of Michigan and the various and several counties and cities therein.

10.21 That the decision reported at 401 Mich 252, as rendered by the Michigan Supreme Court justices, borders on insanity of said members of said court.

10.22 That where it appears that the Michigan Supreme Court members are mentally disabled to render decisions, they should and must be enjoined and restrained from so doing where the security of the State of Michigan may be so jeopardized.

10.23 That your Plaintiff (defendant in wrongful foreclosure action) sought relief in the United States Supreme Court, by way of Petition for Writ of Certiorari to the Michigan Supreme Court, and which said petition for writ was denied on June 12, 1978, for the reason that Plaintiff-petitioner alleged fraud.

11. MEASURE OF DAMAGES

11.1 Your federal petitioner claims actual damages in excess of $25,000.00 as to the foreclosure action. Further, your federal petitioner claims impairment of earning capacity, loss of time, special, general, exemplary and punitive damages

against the Defendants and Co-Defendants, jointly, individually and severally, in the amount of $100,000.00.

11.2 Demand is hereby made for trial by jury in this case.

12. PRAYER FOR RELIEF AND DEMAND FOR TRIAL BY JURY

WHEREFORE, your Federal plaintiff demands:

12.1 That the Defendants and Co-Defendants be required to answer.

12.2 That the Michigan Supreme Court decision reported at 401 Mich 252 be reversed, voided or corrected.

12.3 That Preliminary, Permanent and Eternal injunctive Order be issued against the Michigan Supreme Court members as set forth in the foregoing, and by motion filed.

12.4 That the entire case be removed from the State courts, and that bond requirements on removal of state case be waived, and by motion filed.

12.5 That a three-judge panel be assigned for issuance of Declaratory judgment guaranteeing constitutional rights to mortgagors to pay their own liabilities for taxes and insurance, etc. as to real property mortgaged.

12.5 (a) Jury trial for the recovery of damages so wrongfully sustained.

12.6 Judgment in the amount of $25,000.00; or alternatively, Judgment in the amount of $100,000.00 by jury trial, awarded to Plain-

tiff (defendant in wrongful foreclosure).

12.7 Such other relief as may be consistent with equity and good conscience.

Dated:
July 11, 1979 /s/ Virginia Cramer
Plaintiff

STATE OF MICHIGAN)
) SS.
COUNTY OF WAYNE)

VERIFICATION

On this 13th day of July, 1979, before me, a Notary Public, personally appeared the above-named Virginia Cramer, who made oath that she has read the foregoing PETITION FOR REMOVAL OF MICHIGAN STATE CASE, COMPLAINT, by her subscribed, knows the contents thereof and that the same is true of her own knowledge, except as to those matters stated to be upon information and belief, and as to those matters she believes them to be true.

/s/ Virginia Cramer
27314 Clairview
Dearborn Hts., Mich.
Telephone: 278-7286

Subscribed and sworn to before me
this 13th day of July, 1979.
/s/ DAVID R. CARROLL
Notary Public, Wayne County, Michigan
My Commission expires: October 18, 1982

Filed August 10, 1979 - No. 9-72789

MOTION FOR DISMISSAL BY DEFENDANT MEMBERS OF THE MICHIGAN SUPREME COURT, AND NOTICE OF MOTION (may be submitted without oral argument)

PLEASE TAKE NOTICE that defendant Members of the Michigan Supreme Court will move this Court, HONORABLE ROBERT E. DEMASCIO, UNITED STATES DISTRICT JUDGE, presiding, at the time and date set by Judge DeMascio, or as soon thereafter as counsel can be heard, at Judge DeMascio's courtroom, second floor Federal Building, Detroit, Michigan, unless under ED Mich Rule IX(j) the judge orders submission and determination without oral argument, to dismiss with prejudice that portion of the action pertaining to the members of the Michigan Supreme Court:

1. Because of the inclusion of scandalous matter (FRCP 11 and 12 (f).

2. Because this Court does not have jurisdiction over the members of the Michigan Supreme Court. Plaintiff is seeking to have this Court exercise appellate jurisdiction over the Michigan Supreme Court (FRCP 12(b)(1) & 12(h) (3).

3. Because plaintiff has failed to state a claim upon which relief can be granted, the members of the Michigan Supreme Court being immune from liability while acting within their judicial jurisdiction, (FRCP 12 (b)(6).

4. Because plaintiff has failed to state a claim upon which relief can be granted,

plaintiff is collaterally estopped from asserting matters that have been raised and decided in the action in the Michigan courts for which certiorari has been denied by the United States Supreme Court. (FRCP 12(b) (6).

No concurrence has been sought under ED Mich Rule IX(a) because plaintiff is appearing without counsel.

FRANK J. KELLEY (P15818)
Attorney General
GEORGE H. WELLER (P26249)
Assistant Attorney General
Counsel for members of the
Michigan Supreme Court
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Dated:
August 9, 1979

Filed August 10, 1979 - No. 9-72789

MEMORANDUM OF LAW ON BEHALF OF THE JUSTICES OF THE MICHIGAN SUPREME COURT IN SUPPORT OF THEIR MOTION TO DISMISS THE ACTION AGAINST THEM WITH PREJUDICE

TABLE OF CONTENTS

FACTS
ARGUMENT
1. THE MOTION FOR AN INJUNCTION AND THE PORTION OF THE COMPLAINT CONCERNING THE MEMBERS OF THE MICHIGAN SUPREME COURT IS SO SCANDALOUS THAT THE ACTION AGAINST THE JUSTICES SHOULD BE DISMISSED WITH PREJUDICE.

2. THIS FEDERAL DISTRICT COURT DOES NOT HAVE JURISDICTION.

3. THE JUSTICES OF THE MICHIGAN SUPREME COURT ARE IMMUNE FROM LIABILITY.

A. JUDICIAL IMMUNITY - THE STANDARD.

(1) THE JUDICIAL IMMUNITY DOCTRINE.

(2) THE MEANING OF "JURISDICTION" IN THE JUDICIAL IMMUNITY DOCTRINE.

(3) JUDICIAL IMMUNITY CLOAKS THE ACTIONS OF A JUDGE WHO ACTS IN EXCESS OF JURISDICTION.

4. PLAINTIFF CRAMER IS COLLATERALLY ESTOPPED FROM ASSERTING ANY MATTERS SHE RAISED IN THE MICHIGAN STATE COURT ACTION.

CONCLUSION

The action should be dismissed with prejudice.

EXHIBIT: A. Extracts from Ms. Cramer's Petition for Writ of Certiorari.

A.2-A.4	Questions presented to U.S. Supreme Court.
A.5-A.8	Application to Michigan Supreme Court to Appeal from Decisions of Michigan Court of Appeals.
A.8	Order of Michigan Supreme Court Granting Leave to Appeal.
A.9	Motion to Michigan Supreme Court for Emergency and Immediate Consideration of Attached Motion for Stay of Proceedings in Publication of Decision Pending Review on Certiorari in the U.S. Supreme Court.

(The above EXHIBITS are omitted here for the reason that they are on record in the U. S. Supreme Court, Docket No. 77-1558, Filed on April 27, 1978)

FACTS

The seven compassionate and skilled lawyers who constitute the Michigan Supreme Court have been labelled in Ms. Cramer's complaint as "mentally disabled to render decisions". (compl para 10.22 and 10.23. See, Motion for Injunctive Relief #7).

In Ms. Cramer's complaint she states that the decision of the Michigan Supreme Court in Cramer v Metropolitan Savings and Loan Assn, 401 Mich 252, 258 NW2d 20, cert denied 436 US 958, 98 SCt 3072, 57 LEd2d 1123 (1978) "borders on insanity of said members of said court". (compl 10.21).

Ms. Cramer alleges that by their 1977 decision the Michigan Supreme Court members "have absolutely no regard for the security of the State of Michigan and the various counties and cities therein." (compl 10.20. See, Motion for Injunctive Relief #7)

Ms. Cramer alleges that the Michigan Supreme Court in Cramer "acted as a voluntary advocate of the misconduct" of her opponents. (compl 10.19).

Ms. Cramer alleges that the Michigan Supreme Court condones fraud. (compl 10.11, 10.12. See, Motion for Injunctive Relief #8).

In addition to money damages, Ms. Cramer seeks to have this federal District Court act against the justices of the Michigan Supreme Court:

"prohibiting, preventing, precluding, inhibiting, and restraining and enjoining the rendering of decisions and/or opinions due to mental disability of said persons."
(Motion for Injunctive Relief, "WHEREFORE" clause.)

The basis for these scandalous statements is a controversy between plaintiff Cramer and Metropolitan Savings and Loan Association over the payment by Ms. Cramer into an "escrow" account for real property, ultimately resulting in foreclosure by Metropolitan Savings, and redemption on June 5, 1969 by Ms. Cramer after a sheriff's sale.

This is the history of the litigation. Most of the history was obtained from Ms. Cramer's petition for certiorari to the United States Supreme Court.

___ __ 1968 Metropolitan commences foreclosure proceedings by advertisement.

Aug 12, 1968 Ms. Cramer commences action in Wayne County Circuit Court, #115,792.

Aug 12, 1968 Circuit Judge Murphy enters a TRO and a Show Cause.

Aug 23, 1968 Ms. Cramer files first amended complaint.

Sep 6, 1968 Show Cause hearing.

Sep 27, 1968 TRO dissolved by Circuit Judge Murphy. Court determines Ms. Cramer in default on her mortgage. Court permits Metropolitan to proceed with foreclosure.

Oct 1, 1968 Sheriff sells property to Metropolitan.

June 5,1969 Ms. Cramer redeems property.

Mar 16, 1970 Ms. Cramer seeks to file second amended complaint and to demand jury trial.

Mar 30, 1970 Circuit Judge Bell denies Mrs. Cramer's request to file a second amended complaint.

May 29, 1970 Circuit Judge Bell grants Metropolitan's Motion for Summary Judgment against Ms. Cramer.

Jul 22, 1971 Michigan Court of Appeals reverses and remands with order to permit Ms. Cramer to file second amended complaint. 34 Mich App 638, 192 NW2d 50.

Jul 23, 1971 Ms. Cramer files second amended Complaint.

Mar 27, 1972 On cross motions for summary judgment, acting Circuit Judge Hammer denies Ms. Cramer's motion and grants Metropolitan's motion. Ms. Cramer's complaint dismissed with prejudice.

May 29, 1973 Michigan Court of Appeals in unreported opinion affirms Summary judgment but for Count alleging mishandling of funds in escrow and breach of fiduciary duty in failing to pay Ms. Cramer's taxes on time. This count reversed and remanded for trial on the merits. (Docket No. 14149).

Sep 21, 1973 After trial by jury, Circuit Judge Kirwan adjudges no cause of action after jury finds in favor of Metropolitan.

Jun 2, 1975 Michigan Court of Appeals affirms in unreported opinion. (Docket No 18948)

Oct 6, 1977 Michigan Supreme Court affirms. 401 Mich 252, 258 NW2d 20.

Dec 15, 1977 Michigan Supreme Court denies Ms. Cramer's motion to expand record to include exhibits pertaining to the application for rehearing and denies rehearing. 402 Mich 954 (case 2)

Feb 1, 1978 Michigan Supreme Court denies rehearing. 402 Mich 959 (case 1)

June 12, 1978 United States Supreme Court denies certiorari. 436 US 958, 98 SCt 3072, 57 LEd2d 1123.

(The following action does not include the members of the Michigan Supreme Court as a defendant, but there seems to be some confusion on this in plaintiff's mind because she has intermingled papers pertaining to the following with papers in the Federal District Court action in which the Michigan Supreme Court is named as a defendant.

Jul 14, 1978 Ms. Cramer institutes 8 count action in Michigan Circuit Court against Metropolitan and various lawyers (Wayne County Circuit Court #78-822879-CZ).

Aug 10, 1978 Ms. Cramer enters default against defendant-lawyer Counard.

Sep 7, 1978 Circuit Judge Gribbs sets aside default against lawyer-defendant Counard.

Sep 8, 1978 Circuit Judge Farmer grants accelerated judgment with prejudice on Counts I - VI on the basis of res judicata and grants summary judgment with prejudice on count VIII (that alleged malpractice) on the basis that the lawyer defendants named in count VIII never represented plaintiff.

Oct 13, 1978 Michigan Court of Appeals on own motion dismisses Ms. Cramer's claim of appeal for the reason the order appealed from is not a final judgment within the meaning of GCR 518.2. (Action certified by Clerk of Michigan Court of Appeals on Oct 17, 1978). Docket #78-3794).

Oct 24, 1978 Circuit Judge Kirwan denies lawyer-defendant Counard's motion for accelerated and/or summary judgment because of pending motion by Ms. Cramer in Court of Appeals.

Feb 7, 1979 Michigan Supreme Court denies Ms. Cramer's request for leave to appeal from Oct 13, 1978 action of Michigan Court of Appeals. (#62249)

May 3, 1979 Reconsideration denied by Michigan Supreme Court.

Jul 10, 1979 Ms. Cramer "removes" her own case to Federal District Court.)

Jul 19, 1979 Papers in this-Federal District Court action 9-72789 served on Michigan Supreme Court members.

Aug 9, 1979 Michigan Supreme Court members move to dismiss the action against them.

ARGUMENT

1. THE MOTION FOR AN INJUNCTION AND THE PORTION OF THE COMPLAINT CONCERNING THE MEMBERS OF THE MICHIGAN SUPREME COURT IS SO SCANDALOUS THAT THE ACTION AGAINST THE JUSTICES SHOULD BE DISMISSED WITH PREJUDICE.

Ms. Cramer, no stranger to the courts, brings this action per per. She comes within the provision of FRCP 11 that provides for appropriate disciplinary action being taken if scandalous matter is inserted into a pleading, and within FRCP 12(f) that provides for striking scandalous matter from a pleading.

"Scandalous Matters" are those casting an excessively adverse light on the character of an individual or party.

O.K.C. Corp v Williams, 461 FSupp 540, 550 (ND Tex 1978).

Ms. Cramer's language in the complaint concerning the justices being "mentally disabled", referring to their decision in her case as one that "borders on insanity", stating they have

"no regard of the security of the state", labelling the Court as "a voluntary advocate of the misconduct" of her opponents, and stating that the justices condone fraud, is shockingly scandalous.

The language in the motion for injunctive relief and the relief sought is even more scandalous than the language in the complaint, being premised on the "mental disability" of the seven justices, their condoning of "fraud", their "jeopardizing the security", the premise that they act "without proof" and "without evidence" on "false facts" in violation of the federal Constitution; and requesting injunctive relief "restraining and enjoining the rendering of decisions and/or opinions due to mental disability of said persons.".

These words are more than scandalous - the words are closer to the language of a case in the middle district of Pennsylvania:

> "so absurd and preposterous that they constitute an affront to the dignity of the court and represents a gross abuse of the privilege to bring a suit in a court of law."
> Hohensee v Watson, 188 FSupp 941 (MDPa 1959), Aff'd, 283 F2d 950 (3rd Cir 1960) (per curiam).

Although pro se complaints are to be liberally construed,

> Puckett v Cox, 456 F2d 233 (6th Cir 1972 (case 2) (per curiam),

liberality is not an invitation to license. Language such as that used by Ms. Cramer in her complaint and petition for an injunction has been consistently held by the courts to

be sufficient reason

to dismiss the complaint
Bertucelli v Carreras,
467 F2d 214 (9th Cir 1972) (per Curiam);

Skolnick v Hallett,
250 F2d 861 (7th Cir 1965) Per curiam),
cert denied, 382 US 996, 86 SCt 580,
15 LEd2d 482 (1966);

Payne v Howard,
75 FRD 465 (DDC 1977); and

Martin v Hunt,
28 FRD 35 (D Mass 1961).

See,
Shakespeare v Wilson,
40 FRD 500 (SD Calif 1966);

to dismiss the complaint with prejudice,
Brown v Califano,
75 FRD 497 (DDC 1977);

or even to dismiss the complaint and to enjoin the complaintant from filing another similar legal action,

ex parte Tyler,
70 FRD 456 (ED Mo 1976).

This federal District Court should not tolerate an affront to one of the nation's most prestigious state courts by a disgruntled adversary whose only basis for proceeding is the fact that she lost an appeal - a loss that the United States Supreme Court found no cause to review.

THE ENTIRE ACTION SHOULD BE DISMISSED WITH PREJUDICE!

2. THIS FEDERAL DISTRICT COURT DOES NOT HAVE JURISDICTION.

Ms. Cramer seeks to have this Federal District Court reverse, void, or correct the decision of the Michigan Supreme Court that is published at 401 Mich 252 (compl 12.2).

Ms. Cramer is in fact seeking appellate review.

Appellate review of this decision of the Michigan Supreme Court is by the United States Supreme Court. U.S. Const Art III, Sec 2, cl. 1; 28 USC 1257 (3).

Ms. Cramer sough appellate review via a 145 page petition for certiorari and appendices of almost the same length. Certiorari was denied. 436 US 958, 98 SCt 3072, 57 LEd2d 1123 (1978). This ends the matter.

See, Huffman v Pursue, 420 US 592, 605, 95 SCt 1200, 1209, 43 LEd2d 482, 493 (1975)

Atlantic Coast Line RR Co v Brotherhood of Locomotive Engineers, 398 US 281, 287, 90 SCt 1739, 1743, 26 LEd2d 234, 241 (1970); and

Lamb Enterprises v Kiroff, 549 F2d 1052, 1063 (6th Cir 1977), cert denied, 431 US 968, 97 SCt 2916, 53 LEd2d 1064 (1977).

See, also, England v Louisiana State Board of Medical Examiners, 375 US 411, 419, 84 SCt 461, 466, 11 LEd2d 440, 447 (1964)

This Federal District Court does not have appellate jurisdiction over the Michigan Supreme Court and is without jurisdiction to consider Ms. Cramer's action.

> Sexton v Barry, 233 F2d 220 (6th Cir 1956), cert denied, 352 US 870, 77 SCt 94, 1 LEd2d 76 (1956).

3. THE JUSTICES OF THE MICHIGAN SUPREME COURT ARE IMMUNE FROM LIABILITY.

Ms. Cramer's allegations relate to the actions of the justices of the Michigan Supreme Court in connection with them acting on her appeal and handing down the opinion that appears in 401 Mich 252, 258 NW2d 20 (1977).

As the actions complained of are those of the Justices acting within their judicial jurisdiction, they are absolutely immune from liability.

A. JUDICIAL IMMUNITY - THE STANDARD.

(1). THE JUDICIAL IMMUNITY DOCTRINE.

As first enunciated in Randall v Brigham, 74 US 523, 19 LEd 285 (1869), and expanded by Bradley v Fisher, 80 US 335, 20 LEd 646 (1872),

> ". . . it is general principle, applicable to all judicial officers, that they are not liable to a civil action for any judicial act done within their jurisdiction.:, 74 US at 535, 19 LEd at 191, ". . . even when such acts . . . are alleged to have been done maliciously and corruptly.", 80 US at 351, 20 LEd at 651.

> ". . . the judges are only responsible to the people, or the authorities constituted by the people, for the manner in which they discharge the great trust of their office. If in the exercise of the powers with which they are clothed as ministers of justice, they act with partiality, or maliciously or corruptly, or arbitrarily, or oppressively, they may be called to an account and suspended or removed from office." 80 US at 350, 20 LEd at 650.

When the question arose whether Sec. 1 of the Civil Rights Act of 1871, 42 USC 1983, modified this immunity for state judges, the US Supreme Court in Pierson v Ray, 386 US 547, 87 SCt 1213, 18 LEd2d 288 (1967), reaffirmed the principle of judicial immunity by saying:

> "Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this court recognized when it adopted the doctrine in Bradley v Fisher. . . . This immunity applies even when the judge is accused of acting maliciously and corruptly . . ." 386 US at 553-554, 87 SCt at 1218, 18 LEd2d at 294.

The US Supreme Court went on to say:

> ". . . it is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions

with independence and without fear of consequences."
386 US at 554, 87 SCt at 1218, 18 LEd2d at 294.

"We do not believe that this settled principle of law was abolished by Sec. 1983 . . ." 386 US at 554, 87 SCt at 1218, 18 LEd2d at 295.

See, e.g., Butz v Economou, 438 US 478, 508-509, 98 SCt 2894, 2912, 57 LEd2d 895, 917-918 (1978);

Imbler v Pachtman, 424 US 409, 418 n.12 423 n.20, 96 SCt 984, 989 n.12, 991 n.20, 47 LEd2d 128, 136 n.12, 139 n.20 (1976)

Kurz v Michigan, 548 F2d 172, (6th Cir 1977)

Littleton v Fisher, 530 F2d 691, 693 (6th Cir 1976) (per curiam);

Rosenberg: Stump v Sparkman: The Doctrine of Judicial Immunity, 64 Va L Rev 833 (1978);

Barth: Immunity of Federal and State Judges from Civil Suit - Time for a QUALIFIED Immunity? 27 Case Western Reserve L Rev 727 (1977);

McCormack and Kirkpatrick, Immunities of State Officials Under Section 1983, 8 Rutgers-Camden L J 65 (1976);

26 South Carolina L Rev 633 (1975);

Judge, Schirott, and Bliss, Judicial Immunity Under the Civil Rights Act: Here Come the Judge's Defenses, 7 John Marshall J 213 (1974);

Kates, Immunity of State Judges Under the Federal Civil Rights Acts: Pierson v Ray Reconsidered, 65 NW U L Rev 615 (1971); and

Annot, 173 ALR 802 (1948, 55 ALR 282 (1928), & 13 ALR 1344 (1921)

(2) THE MEANING OF "JURISDICTION" IN THE JUDICIAL IMMUNITY DOCTRINE.

"Jurisdiction" means the judicial power to hear and determine a matter; not the manner, method, or correctness of the exercise of that power.

McGlasker v Colton, 397 FSupp 525, 530 (MD Alabama 1975);

O Regan v Schermerhorn, 25 NJ Misc 1, 50 A2d 10 (1946); and

46 Am Jur2d 145 (Judges, Sec 75, (1969)

"Jurisdiction" is defined as "the authority of law to act officially in the matter then in hand."

McGlasker v Colton, 397 FSupp 525, 530 (MS Alabama 1975);

Jones v Brown, 54 Iowa 75, 6 NW 140 (1880); and

46 Am Jur2d 145 (Judges, Sec 75, (1969)

In the seminal case of Bradley v Fisher, 80 US 335, 20 LEd 646 (1872), the US Supreme Court did not define what is meant by "jurisdiction" when it stated that judges are not liable for damages for any judicial act done

within their jurisdiction, but the meaning of the word can be gleaned from the examples given in the opinion.

> "Thus, if a probate court, invested only with authority over wills and the settlement of estates of deceased persons, should proceed to try parties for public offenses being entirely wanting in the court, and this being necessarily known to its judge, his commission would afford no protection to him in the exercise of the usurped authority." 80 US at 352, 20 LEd at 651.

In this quote from Bradley, the key to understanding "jurisdiction" is the wording,

> "Jurisdiction over the subject of offenses being entirely wanting in the court" (emphasis added).

This is underscored by the example that immediately follows the text of Bradley in which the US Supreme Court says that a judge of a criminal court is acting within his judicial jurisdiction even if he has a person arrested and tried for an act that is not a crime and then sentences the person to a greater punishment than is authorized by law.

As the Supreme Court stated in Stump v Sparkman, 435 US 439, 356, 362, 98 SCt 1099, 1105, 1107, 55 LEd2d 331, 339, 342 (1978).

> "(T)he scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge."

> "(W)hether an act by a judge is a 'judicial' one relate(s) to the nature of the act itself, i.e., whether it is a function normally performed by a judge, and to the expectations of the parties, i.e. whether they dealt with the judge in his judicial capacity."

A judge is absolutely immune from liability for his or her judicial acts, even if his or her exercise of authority is flawed by the commission of grave procedural errors.

> Stump v Sparkman, 435 US 349, 360, 98 SCt 1099, 1107, 55 LEd2d 331, 341 (1978).

If an act performed by a judge is the type of act normally performed only by judges, and the judge acts in his capacity as a judge, the informality with which a judge proceeds does not render his or her action nonjudicial and deprive him or her of his or her absolute immunity.

> Stump v Sparkman, 435 US 349, 360, 98 SCt 1099, 1107, 55 LEd2d 331, 341 (1978)

And, as the Supreme Court also said in Stump v Sparkman:

> "Disagreement with the action taken by the judge, however, does not justify depriving that judge of his immunity. Despite the unfairness to the litigants that sometimes results, the doctrine of judicial immunity is thought to be in the best interests of 'the proper administration of justice . . . (, for it allows) a judicial officer, in exercising the authority vested in him (to) be

free to act upon his own convictions, without apprehension of personal consequences to himself.' Bradley v Fisher, 13 Wall., (80 US) at 347. The fact that the issue before the judge is a controversial one is all the more reason that he should be able to act without fear of suit." 435 US at 363, 98 SCt at 1108, 55 LEd2d at 343.

Published cases in which a judge was found to be acting in a clear absence of all jurisdiction are few, but the following give some meaning to "jurisdiction".

Stump v Sparkman gives the following two examples of federal circuit courts holding that a judge was acting wholly without jurisdiction, 435 US at 361 n.10, 98 SCt at 1107 n.10, 55 LEd2d at 342 n.10.

A justice of the peace forcibly removing a man from his courtroom and physically assaulting him.
Gregory v Thompson, 500 F2d 59 (9th Cir 1974)

A county judge serving on a board that has only legislative and administrative powers.
Lynch v Johnson, 420 F2d 818 (6th Cir 1970)

(See, Santiago v City of Philadelphia, 435 FSupp 136 (ED Pa 1977). Duties of Family Court judges in connection with operation of a Youth Study Center are administrative or ministerial in nature and therefore not included within the immunity umbrella.)

In Ex Parte Virginia, 100 US 335, 25 LEd 676, 680 (1880), a habeas corpus proceeding, a Virginia county court judge was said to be acting outside of his authority and in direct violation of the spirit of a state statute when he excluded colored persons from his jury lists merely because those persons were colored. The U.S. Supreme Court said that the act of selecting the jury lists was a mere ministerial act that could have been performed by a private person or someone such as the sheriff, and was not a judicial act at all.

The Sixth Circuit in Manning v Ketcham, 58 F2d 948 (6th Cir 1933), held in an action for false imprisonment, that a Circuit Judge in Kentucky was acting in a clear absence of jurisdiction when he called a person to the witness chair 39 times, repeatedly questioned him concerning an organization of which the witness was a member, ordered a jury to convict him without evidence, and sentenced him to a fine and a jail term. The Sixth Circuit said as to jurisdiction and judicial immunity:

> "When a judge acts in the clear absence of all jurisdiction, i.e., of authority to act officially over the subject-matter in hand, the proceeding is coram non judice. In such a case the judge has lost his judicial function, has become a mere private person, and is liable as a trespasser for the damages resulting from his unauthorized acts. Such has been the law from the days of the case of the Marshalsea, 10 Coke 68. It was recognized as such in Bradley v Fisher, 13 Wall. (80 U.S.) 335, 351, 20 LEd 646." 58 F2d at 949.

In Spires v Bottorff, 317 F2d 273 (7th Cir 1963), cert denied, 379 US 938, 85 SCt

343, 13 LEd2d 349 (1964),, an Indiana Circuit Court judge was held by a federal court in a civil rights action to be acting outside of the Circuit Court judge's jurisdiction when after disqualifying himself from a coram nobis proceeding to set aside a previous conviction, the judge used his position as a judge to induce a warden to prevent the petitioner from corresponding with the court clerk, obtruded himself into the proceedings, interfered with the trial judge, filed a known to be false affidavit, and intimidated and discredited the public defender.

In Harris v Harvey, 436 FSupp 143 (ED Wis 1977), a federal civil rights case against a white Wisconsin County Court judge, the U.S. District Court held that allegations of the judge informing newspaper reporters of what transpired at a secret investigation concerning the black plaintiff, and holding a press conference to reveal charges and to inform the press that plaintiff had refused to testify at the investigation, were allegations of the judge acting wholly outside of his jurisdiction.

In Wade v Bethesda Hospital, 337 FSupp 671, 674 (SD Ohio 1971) a sterilization case involving a civil suit for damages, the US District Court rejected a state probate judge's argument that he was immune because he had a general power in equity to order the sterilization of a "feeble minded" woman upon petition of a county Child Welfare Board. The US District Court judge found that there being "no set of circumstances or conditions under Ohio law which would permit defendant . . . (judge) to Order plaintiff to submit to sterilization", the state probate judge acted wholly without jurisdiction.

> (In Stump v Sparkman a sterilization case involving a judge of an Indiana Court of general jurisdiction, the Supreme Court held that "(t)he Indiana law vested in judge Stump the power to entertain and act upon a petition for sterilization. He is, therefore, under the controlling cases, immune from damages liability even if his approval of the petition was in error."
> 435 US at 364, 98 SCt at 1108-1109, 55 LEd2d at 344.)

In another civil rights action, a federal district court in Yates v Village of Hoffman, 209 FSupp 757 (ND Ill 1962), held that a magistrate in Illinois was acting without jurisdiction when the magistrate directed a police officer to take into custody an individual who was not named in an arrest warrant.

The Supreme Court in Stump v Sparkman, 435 US 349, 361, 98 SCt 1099, 1107, 55 LEd 2d 331, 342 (1978), gave the following as an example of a federal circuit court finding a judge's acts within his jurisdiction.

> The parents of a boy who was to be tried on a criminal charge came to the Texas courthouse to bring their son a fresh suit of clothes. They went to the state district judge's office to find out when the trial would start. The judge lost his temper and ordered the old couple out of his office. Due to a hearing problem, confusion, and fright the couple did not move fast enough, so the judge called a deputy sheriff to jail the father for the rest of the day. Several months later the judge issued an order holding the father in contempt nunc pro tunc. The Fifth Circuit held

> that the judge was acting within his jurisdiction because the use of contempt power is a normal judicial function; the events involved occurred in the judge's chambers; the controversy centered around a case then pending before the judge; and the confrontation arose directly and immediately out of a visit to the judge in his official capacity.
> McAlester v Brown, 469 F2d 1280 (5th Cir 1972).

Some recent cases in which a judge has been found to be acting within his or her jurisdiction, and therefore to be immune from suit are:

SLavin v Curry, 574 F2d 1256 (5th Cir 1978), (Judge cancelling a criminal - bond so the police could move witnesses out of town where the complainant could not find them, and selecting a court reporter who later altered a transcript at the direction of the judge);

Mee v Becker, 456 FSupp 224 (WD Mo 1978). (Failure of US District Judge to place lawyer on a list to receive criminal appointments);

Baer v Baer, 450 FSupp 481 (ND Cal 1978) (Superior Cout judge issuing an ex parte conservatorship order in a "legal deprogramming" case);

Chalk v Elliott, 449 FSupp 65 (ND Tex 1978) (County judge denying a petition for a liquor license);

Orlander v Wizel, 443 FSupp 744 WD Ark 1978), (Chancellor and Probate Judge receiving a petition for temporary guardianship in lieu of the Clerk of the Court, and acting on the petition);

Fox v Castle, 441 FSupp 411 (ND Pa 1977), (Justice of the Peace setting bail and making probable cause determination at a preliminary hearing);

Peacock v National Bank and Trust Co of Columbus, 241 Ga 280, 244 SE2d 816 (1978), (Superior Court judge sustaining nonresident defendant's motions to dismiss for lack of jurisdiction);

Higgins v Redding, 34 Or App 1029, 580 P2d 580 (1978), (Issuing erroneous bench warrant for the arrest of a probationer);

J.A. Meyers & Co v Los Angeles County Probation Dept, 78 Cal App 3d 309, 144 Cal Rptr 186 (1978), (Placing a person on probation);

Scott v City of Niagra Falls, 407 NYS2d 103 (Superior Ct Niagra Cty 1978), (County Judge assigning request for writ of error coram nobis to the public defender's office).

(3) JUDICIAL IMMUNITY CLOAKS THE ACTIONS OF A JUDGE WHO ACTS IN EXCESS OF JURISDICTION.

Although, as has been shown when a judge acts entirely without jurisdiction she or he is not protected by the judicial immunity doctrine, a judge is protected by the

judicia immunity doctrine, a judge is protected by the judicial immunity doctrine when he or his actions are in excess of jurisdiction, but not without jurisdiction.

As was said in Bradley v Fisher, 80 US 335, 351, 20 LEd 646, 651 (1972):

> "(J)udges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and - are alleged to have been done maliciously or corruptly."

"Excess of Jurisdiction" has been defined as follows:

> "'Excess of jurisdiction,' as distinguished from the entire absence of jurisdiction, means that the act, although within the general power of the judge, is not authorized, and therefore void, with respect to the particular case because the conditions which alone authorize the exercise of his general power in that particular case are wanting, and hence the judicial power is not in fact lawfully involved."

Poque v Swink, 365 Mo 503, 284 SE2d 868 (1955) (per curiam),

See, State v Bushong, 93 Ohio App 201, 210-211, 112 NE2d 675, 681 (1952), aff'd 159 Ohio St 259, 111 NE2d 918 (1953)

State v Bushong, 92 Ohio App 101, 109 NE2d 692 (1945); and

21 CJS 37 (Courts, at 25, 1940).

See, also,
Stafford: An Overview of Judicial Immunity, 1 State Ct J 3, 34 (Summer 1977).

Some examples of judicial acts that courts have found to be in excess of jurisdiction, but that were nevertheless within the judge's jurisdiction and therefore protected by the judicial immunity doctrine, are:

A judge in Arizona signing a temporary guardianship order before the subject, then in Arkansas, was within Arizona jurisdiction, so a father could "deprogram" his son.
Rankin v Howard, 457 FSupp 70 (D Ariz 1978)

A city magistrate in Arizona wrongfully jailing a person convicted of a traffic offense.
Evans v Copins, 26 Ariz App 96, 546 P2d 365 (1976)

A Michigan Municipal Court judge improperly committing a person as mentally ill. Olepa v Mapletoff, 2 Mich App 734, 141 NW2d 350 (1966)

A Missouri Circuit Court judge holding several county judges in contempt for failure to comply with the circuit judge's order to increase the salary of a deputy clerk. Poque v Swink, 365 Mo 503, 284 SW2d 868 (1955) (per curiam)

A Chicago Municipal Court judge improperly approving of sureties on bail bonds through negligent and misplaced

confidence in a certain bondsman.
In re McGarry, 380 Ill 359, 44 NE2d 7 (1942).

An Alabama Justice of the Peace issuing an arrest warrant on the basis of an affidavit insufficient to charge any criminal offense.
Broom v Douglass, 175 Ala 268, 57 So 860 (1912)

A Municipal Court judge in Maine issuing arrest warrants based on a void city ordinance.
Rush v Buckley, 100 Me 322, 61 A 774 (1905).

The judges of the Michigan Supreme Court were obviously acting within their judicial jurisdiction when acting on Ms. Cramer's appeal. The doctrine of judicial immunity from liability applies.

4. PLAINTIFF CRAMER IS COLLATERALLY ESTOPPED FROM ASSERTING ANY MATTERS SHE RAISED IN THE MICHIGAN STATE COURT ACTION.

Without entering into the controversy over whether the principle is "res judicata" or "collateral estoppel",

Overseas Motors, Inc. v Import Motors, Ltd. Inc, 375 FSupp 499, 509-510, n.2 - n.4 (ED Mich 1974), aff'd 519 F2d 119 (6th Cir 1975), cert denied, 423 US 987, 96 SCt 395, 46 LEd2d 304 (1975)

it is an inherent principle that a question or fact that was put in issue by a plaintiff in a court of competent jurisdiction, upon which there has been a final judgment, cannot be disputed in a subsequent action by the same plaintiff:

U.S. CONST, Art IV, sec 1;

28 USC 1738;

Overseas Motors, Inc v Import Motors, Ltd, Inc, supra, 375 FSupp at 509-524

Gambocz v Yelencsics, 468 F2d 837 (3rd Cir 1972);

Bruszewski v United States, 181 F2d 419 181 F2d 419 (3rd Cir 1950), cert denied, 340 US 865, 71 SCt 87, 95 LEd 632 (1950);

State of Maryland v Capital Airlines, Inc, 267 FSupp 298 (D Md 1967),

Booth v Baker Industries, Inc, 262 FSupp 168 (D Del 1966),

Smith v Mosier, 169 F 430 (CCNDNY 1909); and

Eclavea: State of Federal Law as Governing Applicability of Doctrine of Res Judicata or Collateral Estoppel in Federal Court Action, 19 ALRFed 709 (1974).

As shown by the history of Ms. Cramer's action, and as demonstrated in Ms. Cramer's various petitions (exhibit A to this Memorandum of Law), she has had the opportunity to and has put in issue in the Michigan State Courts, and to the United States Supreme Court, the same issues she is trying to put in issue in this federal District Court.

"(A) party should have a full and fair day to be heard on the issue but should not be able to litigate that issue ad nauseam. There must be an end to litigation at some point."
State of Maryland v Capital Airlines, 267 FSupp 298, 303-304 (DMd 1967)

It is time to say to Ms. Cramer -

STOP!

CONCLUSION

The action should be dismissed with prejudice.

Respectfully submitted,
FRANK J. KELLEY (P 15818)
Attorney General
GEORGE H. WELLER (P 26249)
Counsel for the defendant
members of the Michigan
Supreme Court
Office Address:
7th floor Law Building
525 West Ottawa
Lansing, Michigan 48913
(517) 373-8060

Dated:
August 9, 1979

Exhibit: A. Extracts from Ms. Cramer's Petition for Writ of Certiorari

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(As indicated previously herein, the above EXHIBITS are omitted here for the reason that they are on record in the U. S. Supreme Court, Docket No. 77-1558, Filed on April 27, 1978)

Filed September 26, 1979 - No. 9-72789
United States District Court - Detroit

OBJECTIONS TO MOTION FOR DISMISSAL BY DEFENDANT MEMBERS OF THE MICHIGAN SUPREME COURT

Now comes Petitioner-Cramer, in pro per, Defendant in wrongful foreclosure, and objects to motion for dismissal by Defendant Members of the Michigan Supreme Court, and Petitioner-Cramer says as follows:

1. Answering to paragraph 1 as to the inclusion of "scandalous" matter, Petitioner denies that she has included any "scandalous" matter on her own volition or choice, but that the matters are specifically related to the subject matter of the action and pertinent to the decision reported at 401 Mich 252.

2. Answering to paragraph 2 as to Federal court jurisdiction over the members of the Michigan Supreme Court, Petitioner states and avers that the Federal court has jurisdiction over the individual persons even it they are members of the Michigan Supreme Court; and further, the United States Supreme Court has always sustained District Court jurisdiction over State officers and to restrain individual state officers from doing what the 14th Amendment forbids the State to do." Chicago, B. & Q. R. Co. v Chicago, 166 US 226; Ex parte Virginia, 100 US 339. It is the established practice of the United States Supreme Court to sustain the jurisdiction of the federal courts to issue injunctions to protect rights safeguarded by the Constitution, Philadelphia Co. v Stimson, 223 US 605; Hays v Seattle, 251 US 233; Pennoyer v McConnaughy, 140 US 1; City of Mitchell v Dakota Telephone Co., 246 US 396.

Further, Petitioner-Cramer denies she is

seeking to have the Federal District Court exercise appellate jurisdiction over the Michigan Supreme Court, and Petitioner-Cramer states and avers that the "subject matter" is a question of law, and that the Court cannot dismiss the case without first assumming jurisdiction, and that the dismissal would be on the merits, not for lack of jurisdiction and not for want of jurisdiction. Bell v Hood, 327 US 678.

3. Answering to paragraph 3, Petitioner-Cramer denies that the individual persons, who are also members of the Michigan Supreme Court, are immune from liability coram non judice, and further, jurisdiction is not defeated by the possibility that the everments might fail to state a cause of action or a claim on which Petitioner could actually recover.

4. Answering to paragraph 4, as to collateral estoppel and certiorari having been denied by the United States Supreme Court, Petitioner-Cramer affirmatively states and avers that she is not collaterally estopped on any such matters for the reason that denial of certiorari makes no precedent and imports no expression of opinion on the merits of the case. State Bar of Michigan v Brotherhood of R.R. Trainmen, 1970, 174 NW2d 811, 383 Mich 201, revd. 91 S Ct 1076, 401 US 576, 28 L Ed 2d 339.

PETITIONER-CRAMER'S AFFIRMATIVE MATTERS

1. Where Petitioner's Complaint shows "Reversal" of the Michigan Supreme Court decision reported at 401 Mich 252, Petitioner-Cramer moves the Court and requests that said word "reversal" be amended to "Reformation", to correct error.

2. Relief to be sought - Reformation of Michigan Supreme Court decision reported at 401 Mich 252, and/or Writ of Error Coram non judice, or, in the alternative, injunctive relief.

For the reasons shown above, the motion for dismissal by Defendant members of the Michigan Supreme Court should be denied.

Respectfully submitted,

Virginia Cramer
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
September 20,1979

P.S. I bought some law books. But, I am having a very difficult time in trying to read the small print.
Ex Parte Virginia(Cramer)

BRIEF IN SUPPORT OF OBJECTIONS TO MOTION FOR DISMISSAL BY DEFENDANT MEMBERS OF THE MICHIGAN SUPREME COURT

FACTS

Petitioner-Cramer does not dispute the facts as shown in the Memorandum of law on behalf of the Justices of the Michigan Supreme Court, except as to certain omissions, as follows:

Petitioner-Cramer has set forth the following eight (8) paragraphs in her Motion for Preliminary, Permanent and Eternal Injunctive Relief:

1. Restraining and enjoining the taking of judicial notice without proof and without evidence.

2. Restraining and enjoining the rendering of decisions and/or opinions in favor of unscrupulous litigants and their attorneys who submit erroneous, falsified and fraudulent statements in their pleadings to the court and where said statements are unsupported and not priorly litigated in the procedures of the lower courts.

3. Restraining and enjoining the rendering of decisions and/or opinions based on false facts.

4. Restraining and enjoining the rendering of decisions and/or opinions where due process and equal protection of the laws are denied and in violation of the Fourteenth Amendment to the United States Constitution.

5. Restraining and enjoining the rendering of decisions and/or opinions in favor of implied covenants and agreements which are unenforceable.

6. Restraining and enjoining the rendering of decisions and/or opinions by failure in their duty to declare a contract or covenant and agreement illegal.

7. Restraining and enjoining the rendering of decisions and/or opinions by exertion of power due to mental disability and jeopardizing the security of property and title-holders of property and jeopardizing the security of the State.

8. Restraining and enjoining the rendering of decisions and/or opinions by exertion of power where fraud is perpetrated upon the court and condoned by the court.

The above shown matters are related to the subject matter of the action. Where the statements are made are related to the subject matter, they cannot be stricken as "scandalous."

ADDITIONAL FACTS

Petitioner-Cramer has never been heard and never allowed to be heard in the State court on said foreclosure matter. She has been systematically and continuously been denied a day in court as to the said foreclosure matter. Yet, the State courts have been writing decisions and making determinations, at every level, "ex parte" as to your Petitioner-mortgagor regarding the foreclosure matter. The decision reported at 401 Mich 252 is based on false facts.

ARGUMENT

Where the matters are related to the subject matter of the action they should not be stricken where they are material, pertinent and obviously not false. The material and pertinent matters cannot be excluded from the pleadings. These material and pertinent matters are an important part of the issues and elements where Petitioner-Cramer has been denied "a day in court" as to the foreclosure matter, and where she has never been heard and never allowed to be heard.

> "To strike material as scandalous, it must be obviously false and unrelated to the subject matter of the action."
> Gateway Bottling, Inc. v Dad's Rootbeer Co., D.C. Pa. 1971, 53 F. R. D. 585

As for example, where the Michigan Supreme Court members, in their cecision reported at 401 Mich 252, have said "we are convinced that under the terms of the contract before us, plaintiff has defaulted on a condition. By refusing to pay monies into escrow, plaintiff failed to perform a covenant the performance of which was a condition of the contract." These, among many other statements and determinations made by the members of the court, are false statements.

In Cramer's "Summary of Facts" in her brief on appeal, on page 26, as docketed in No. 57215 in the Michigan Supreme Court, it shows:

> "The mortgagor had maintained her payment schedule as to the principal and interest in an exemplary manner and she had made substantial prepayments of principal together with having made a regular monthly escrow deposit each and every month without fail."

Cramer has cancelled checks to show that she paid "escrow" each and every month without fail, and that the records of Metropolitan Federal Savings and Loan (mortgagee) show that Cramer paid "escrow" each and every month without fail, prior to the foreclosure date of May 23, 1968.

The Defendants-Metropolitan Federal Savings and Loan and their attorneys have perpetrated a fraud upon the court and the court has condoned the fraud, for the reason that Cramer's cancelled checks were filed in the court record as "exhibits" and where said "exhibits" show that Cramer paid "escrow" each and every month without fail prior to the foreclosure date of May 23, 1968.

No person is immune to becoming mentally disabled. No person is immune to becoming sick.

See: Burger, A Sick Profession, 5 Tulsa L. J. 1 (1968) and where Judge Warren E. Burger, in describing the state of the legal profession, commented and posited the following proposition:

"(1) the legal profession as a whole has very poor standing;

(2) there are many causes for this, some of them incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and

(3) there is something we can and ought to do about this as the English bar and bench did a century ago."

JURISDICTION

The court must assume jurisdiction first for a matter to be possibly dismissed, and then dismissal would be on

the merits, not for want of jurisdiction.

Petitioner-Cramer moves the court to amend the word "reverse" to read as "reformation." Petitioner-Cramer is not seeking "appellate review" in the federal District Court.

For cases discussing the distinction between questions going to the merits and those going to the jurisdiction:

see: Illinois Central R. Co. v Adams, 180 US 28,

Geneva Furniture Co. v Karpen, 238 US 254

Nashville, C. & St. L.R. Co. v Taylor, 86 F 168

Further, it is the established practice of the United States Supreme Court to sustain the jurisdiction of the federal courts to issue injunctions to protect rights safeguarded by the Constitution, Philadelphia Co. v Stimson, 223 US 605; Hays v Seattle, 251 US 233; Pennoyer v McConnaughy, 140 US 1; City Railway Co. v Citizens' Railroad Co., 166 US 557; City of Mitchell v Dakota Telephone Co., 246 US 396.

and to restrain individual state officers from doing what the 14th Amendment forbids the State to do. Chicago, B. & Q. R. Co. v Chicago, 166 US 226; see also Ex parte Virginia, 100 US 339.

"If the court does later exercise its - jurisdiction to determine that the allega-

tions in the complant do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction." Bell v Hood, 327 US 678; Swafford v Templeton, 185 US 487; Binderup v Pathe Exchange, 263 US 291.

JUDICIAL IMMUNITY FROM LIABILITY

Judicial immunity from liability is a question of law, and as to whether said members acted in their judicial capacity or acted without authority as individual persons.

Jurisdiction is not defeated by the possibility that the averments might fail to state a cause of action on which Petitioner could actually recover, such as damages. "For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy."
Bell v Hood, 327 US 678; Swafford v Templeton, 185 US 487; Binderup v Pathe Exchange, 263 US 291.

Whether or not the doctrine of judicial immunity from liability applies is a question of law, and it must be decided after and not before the court has assumed jurisdiction.

COLLATERAL ESTOPPEL

Petitioner-Cramer is not collaterally

estopped from asserting any matters she raised in the Michigan State court action; and she is not collaterally estopped by the denial of petition for writ of certiorari to the Michigan Supreme Court in the United States Supreme Court.

As Petitioner-Cramer understand it, her Petition for Writ of Certiorari was denied for the reason that fraud is alleged. The United States Supreme Court has said "denial of certiorari makes no precedent and imports no expression of opinion on the merits of the case." State Bar of Michigan v. Brotherhood of R. R. Trainmen, 1970, 174 NW 2d 811, 383 Mich 201, revd. 91 S. Ct. 1076, 401 US 576, 28 L Ed 2d 339.

CONCLUSION

For the reasons stated herein and in Petitioner-Cramer's Objections to Motion for Dismissal by Defendant Members of the Michigan Supreme Court, this Honorable federal court should deny the motion for dismissal.

Respectfully submitted,

Dated:
September 20,
1979

Virginia Cramer, Petitioner
in pro per, Defendant in
wrongful foreclosure

Filed August 9, 1979 - No. 9-72789
U. S. District Court

OBJECTION TO PETITION FOR REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN (SOUTHERN DIVISION-DETROIT) AND MOTION FOR REMAND TO STATE COURT

The Defendants Metropolitan Savings Association, James I. McClintock, Roger C. Richards and John C. Denyer, and Co-Defendants McClintock Donovan Carson & Roach and James I. McClintock, Michael Doelle and William P. Thorpe, by their attorneys McClintock Donovan Carson & Roach, hereby object to the Petition for Removal of Cause to the United States District Court for the Eastern District of Michigan (Southern Division-Detroit) and Notice of Removal of the State case to the United States District Court heretofore filed in the instant action by the Plaintiff Virginia Cramer as follows:

1. As is evident from the pleadings filed herein Virginia Cramer was and is the Plaintiff in a case filed by her now pending in the Wayne County Circuit Court entitled Virginia Cramer v. Metropolitan Savings Association a/k/a Metropolitan Federal Savings and Loan Association, James I. McClintock, Roger C. Richards and John C. Denyer, jointly, severally and individually, Defendants, and McClintock Donovan Carson & Roach and James I. McClintock, Michael Doelle and William P. Thorpe, attorneys at law, jointly, severally and individually, Co-Defendants and Allen Counard, Attorney at Law, Co-Defendant, being No. 78-822-879 CZ, and Plaintiff in a prior action alleging the same subject matter which was

ultimately reported at 401 Mich 252. A copy of the Michigan Supreme Court decision entitled Cramer v Metropolitan Savings and Loan Association, 401 Mich 252 (1977), together with a copy of the Second Amended Complaint on which the case was ultimately decided, are attached hereto as Exhibits A & B, respectively.

2. As Plaintiff, Virginia Cramer is not entitled to removal pursuant to 28 USCA 1441, et seq.

3. This Objection to Petition and Motion to Remand are based upon the files and records of the State Court cause, the files and records herein, the Affidavit of William P. Thorpe filed herewith and Brief in Support hereof.

WHEREFORE, the Defendants and Co-Defendants pray that this matter be remanded to the Wayne County Circuit Court and that Defendants and Co-Defendants be awarded just costs and attorney fees in the amount of $1,000.00.

McCLINTOCK DONOVAN CARSON & ROACH
By WILLIAM P. THORPE (p 21436)
Attorneys for Defendants and Co-Defendants
Date: August 8, 1979

MEMORANDUM OF LAW IN SUPPORT OF OBJECTION TO PETITION FOR REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN (SOUTHERN DIVISION-DETROIT) AND MOTION FOR REMAND TO STATE COURT

28 USC 1441, et seq. provides for a procedure whereby a defendant in a state

action may remove the same to the federal courts upon compliance with the procedures stated therein. The statute does not provide for or allow removal of the case by a plaintiff.

Virginia Cramer filed the action which she wishes to remove in the Wayne County Circuit Court for the State of Michigan and as Plaintiff she has no right to removal. 28 USCA 1441(a); 28 USCA 1446(a); In re Walker, C.A. Tex. 1967, 375 F2d 678; Union Const. Co. v Dillingham Corp., 334 F Supp 502 (1972); Coastal Air Service, Inc. v. Tarco Aviation Service, Inc., 301 F Supp 586 (1969).

Mrs. Cramer's convoluted attempt to show that she is the Defendant does not make it a fact. She instituted the prior action reported at 401 Mich 252 and the instant action subject to the removal petition entitled Virginia Cramer v. Metropolitan Savings Association, et al., now pending in the Wayne County Circuit Court, being No. 78 822 879 CZ.

In addition to Mrs. Cramer having no standing for removal, she failed to file a bond pursuant to 28 USC 1446(d), which states:

> Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond with good and sufficient surety conditioned that the defendant or defendants will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removal or was improperly removed.

Virginia Cramer's blatant disregard of the rules subjects her to costs pursuant to 28 USC 1447(c), which states:

> If at any time before the final judgment if appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.

It is obvious that Mrs. Cramer removed this action improvidently and there is no jurisdiction or gounds therefor.

For the reasons stated above, Defendant and Co-Defendants respectfully request that this matter be remanded to the Circuit Court for the County of Wayne, State of Michigan together with an order directing Plaintiff to pay Defendants and Co-Defendants just costs and attorney fees in the amount of $1,000.00.

Respectfully submitted,
McCLINTOCK DONOVAN CARSON
& ROACH
By WILLIAM P. THORPE (P 21436)
Attorneys for Defendants and
Co-Defendants

Dated:
August 8, 1979

EXHIBIT "A" - Filed August 9, 1979
U. S. District Court - No. 9-72789

CRAMER v METROPOLITAN SAVINGS & LOAN ASSOCIATION

Docket No. 57215. Argued October 7, 1976 (Calendar No. 18). -- Decided October 6, 1977.

Virginia Cramer brought an action to enjoin foreclosure of a mortgage and for damages against Metropolitan Savings and Loan Association and its officers, alleging excessive escrow demands and mishandling of the escrow funds as a defense to the foreclosure. The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default. Plaintiff's motion to file an amended complaint was denied and Edward F. Bell, J., granted the defendants summary judgment on the ground of res judicata. The Court of Appeals, Danhof, P.J., and McGregor and Levin, JJ., reversed in a per curiam decision (Docket No. 9619). 34 Mich App 638; 192 NW2d 50 (1971). Plaintiff filed an amended complaint of six counts which alleged wrongful foreclosure, and other wrongdoing, and Richard L. Hammer, J., granted summary judgment for Metropolitan. The Court of Appeals, T. M. Burns, P.J., and Adams and Bashara, JJ., affirmed as to five counts, but reversed as to the count alleging breach of a fiduciary relationship (Docket No. 14149). A jury in Circuit Court, John R. Kirwan, J., found no cause of action against the defendants on the allegation of a breach of a fiduciary duty. The Court of Appeals, R. B. Burns, P.J., and T. M. Burns and R. M. Maher, JJ., affirmed (Docket No. 18948). The plaintiff appeals. Held:

1. The existence of a statute which permits a mortgagee to foreclose a mortgage by advertisement rather than by judicial process does not constitute state action under the Equal Protection Clauses of the Michigan and Federal Constitutions. Since the power of sale is an incident of the private right to contract, a mortgagee who exercises a foreclosure option is relying on a contract remedy, and not on a right created by statute.

2. The remedy for breach of a covenant is damages or an injunction, whereas the remedy for default on a condition subsequent is termination of the contract. The question whether a particular provision in a contract is a condition or a covenant depends in large part on the language of the contract, interpreted with the intent of the parties as the paramount consideration. Under the terms of the mortgage in the instant case, plaintiff failed to perform a covenant to pay monies into escrow, the performance of which was a condition of the contract. The remedy authorized by the mortgage was termination by foreclosure of the mortgage. This case does not involve a mere technical breach of the contract by the mortgagor, but a refusal to make the payments as agreed.

Affirmed.

Filed October 6, 1977 - No. 57215
STATE OF MICHIGAN SUPREME COURT

VIRGINIA CRAMER, Plaintiff-appellant,
v
METROPOLITAN SAVINGS AND LOAN ASSOCIATION, ET AL, Defendants-Appellees.

BEFORE THE ENTIRE BENCH (except Moody, J.)
KAVANAGH, C.J.

This appeal arises out of a mortgage foreclosure on plaintiff's property by defendant after the latter accelerated the debt because of an alleged deficiency in plaintiff's "escrow" account. The parties have been before the Court of Appeals in this matter on three occasions, the last appeal to that Court resulting in an affirmance of a jury's verdict for defendant on a breach of fiduciary duty count brought by plaintiff.

This Court granted leave to consider plaintiff's allegations of error in all of the proceedings below.

In June, 1963, plaintiff executed a mortgage application to defendant Metropolitan Savings and Loan Association (hereinafter "Metropolitan") which then issued a "commitment letter", dated July 3, 1963, setting forth the conditions of the loan.

Pursuant to that commitment, plaintiff executed a promissory note secured by a mortgage delivered to defendant on July 29, 1963.

The mortgage included the following terms:

"Mortgagor covenants and agrees: * * *

"2. In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments levied or to be levied against said premises that

will next become due, (and) an installment of the premium or premiums that will next become due to renew the insurance on said premises (as hereinafter provided) * * * . The said installments shall be equal, respectively, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefore, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be held by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single payment. If the sum so deposited shall not be sufficient to pay the taxes, assessments and premiums when the same become due, mortgagor agrees to forthwith pay to mortgagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefore, the excess shall be credited upon principal. * * *

"8. In the event of default in the payment of said indebtedness, or any part thereof, or in the performance of any of the covenants or conditions hereof, mortgagee may, without notice, at its option, declare the entire indebtedness secured hereby due,—then or thereafter, as it may elect, regardless of the date of maturity and is hereby authorized and empowered to sell or cause to be sold said premises, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder, and all costs and charges of the sale (including the

attorneys' fee provided by statute), rendering any surplus moneys to mortgagor. The commencement of proceedings to foreclose this mortgage in any manner authorized by law shall be deemed an exercise of the above option." * * *

The parties also executed a "Loan Settlement Statement", which itemized the monthly payments as follows:

Principal and Interest	$103.81
Tax Escrow	22.25
Insurance Escrow	4.00
MGIC (Mortgage Guaranty Insurance Company) Premium	3.44
	$133.50

The mortgage note, in the amount of $16,500, provided for a monthly payment of $103.81, constituting principal and interest, and made no mention of any other amount for escrow or mortgage insurance premium.

For a period of time, plaintiff made timely payments, including escrow, and in fact, was well ahead of her repayment schedule for principal. There was a continuing dispute, however, over the escrow account, with plaintiff alleging that defendant had not paid her taxes and escrow premiums when due and that defendant was requiring excessive escrow payments.

Defendant admits that it allowed plaintiff's 1963-1964 taxes to become delinquent, but in 1965 paid the back taxes, including all penalties. Plaintiff finally stopped the escrow payments, and stated that she wished to make her tax and insurance payments directly. Plaintiff admits in her brief that she did not maintain a current escrow account.

On May 23, 1968, defendant instituted foreclosure proceedings by advertisement pursuant to MCLA 600.3201 et seq.; MSA 27A.3201 et seq., and paragraph 8 of the mortgage agreement. Defendants complied in all respects with the requirements of the statute.

Plaintiff obtained a temporary restraining order, which was subsequently dissolved after the court determined that plaintiff was in default of her mortgage. The property was sold at a sheriff's sale on October 1, 1968 and plaintiff redeemed the property on June 5, 1969.

Following several judicial proceedings, including an appeal to the Court of Appeals, (34 Mich App 638; 192 NW2d 50 (1971)), plaintiff was allowed to file an amended complaint, which alleged breach of contract, abuse of process, libel, breach of fiduciary duty, invasion of privacy, and intentional infliction of emotional distress. Summary judgment was granted for defendant on March 27, 1972.

In an unpublished per curiam opinion (Docket No. 14149, released May 29, 1973), the Court of Appeals affirmed on all counts except that charging breach of fiduciary duty, which was remanded for trial. The subsequent jury trial on that issue resulted in a verdict for defendants, and judgment was entered September 21, 1973.

The Court of Appeals affirmed on June 2, 1975.

I

The appeal raises two questions which merit discussion. First, plaintiff questions the constitutionality of the Michigan foreclosure by advertisement statute, which provides in part:

> "Every mortgage of real estate, containing therein a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner hereinafter specified." MCLA 600.3201, MSA 27A.3201.

> "To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure, it shall be requisite:
>
> "(1) That some default in a condition of such mortgage shall have occurred, by which the power to sell became operative * * * ." MCLA 600.3204, MSA 27A.3204.

The essence of plaintiff's constitutional argument is that the foreclosure statute grants a mortgagee the power to terminate a mortgage relationship by use of procedures that are not in harmony with the requirements of the Fourteenth Amendment to the United States Constitution and Article 1, section 17 of the Michigan Constitution. Specifically, she claims that the Michigan foreclosure by advertisement statute, as applied, violated the due process clauses of the two constitutions in that it requires neither a notice of hearing, nor a hearing to establish the debt.

Plaintiff's argument rests upon the United States District Court's decision in Northrip v Federal National Mortgage Ass'n, 372 FSupp 594 (ED Mich, 1974).

There the court acknowledged that a due process question is raised only where there is state action, the test for which is whether or not the state has significantly involved itself in the challenged conduct. The Northrip court held that state action was present because the "statute encourages mortgagees to seek foreclosure by advertisement, rather than by judicial process * * *". 372 FSupp 597.

The district court also ruled that while a power of sale may be deemed to waive the right to a due process hearing before foreclosure by advertisement, there was no such waiver in the case before it. The plaintiff had not "voluntarily, intelligently and knowingly" waived her due process rights because the power of sale did not include any terms of waiver, nor did it notify plaintiff of the procedure to be utilized in foreclosing upon her property.

The district court ultimately held that the statute, as applied, did not satisfy minimum due process requirements "because the process failed to provide an adequate opportunity to be heard before the taking of a significant property interest". 372 F Supp 599.

Plaintiff in her brief fails to note, however, that the lower court decision in Northrip was subsequently reversed. The Sixth Circuit Court of Appeals disavowed the state action analysis employed and the result reached by the district court. 527 F2d 23 (CA 6, 1975).

The Federal appellate court held that the existence of a statute which permitted

a mortgagee to foreclose by advertisement rather than by judicial process did not constitute state action.

Since "the power of sale is an incident of the private right to contract. Equitable Trust Co. v Barlum Realty Co. 294 Mich 167; 292 NW 691 (1940)", a mortgagee who exercises a foreclosure option is relying on a contract remedy, and not on a right created by the statute. 527 F2d 26-27. Therefore, the state cannot be said to be significantly involved, through "encouragement", in the challenged conduct, and a due process question is consequently not presented.

Our own Court of Appeals in National Airport Corp v Wayne Bank, 73 Mich App 572; 252 NW2d 519 (1977), has recently adopted the Sixth Circuit's full and definitive analysis of the Michigan foreclosure by advertisement statute. We do likewise.

Accordingly, we hold that the plaintiff's instant claim of unconsitutionality under both the Michigan and Federal Constitutions fails for lack of the existence of state action.

II

We next consider whether or not plaintiff's refusal to make timely escrow payments for taxes and insurance constituted a "default * * * in any condition of (the) mortgage", alaowing foreclosure by advertisement pursuant to MCLA 600.3201; MSA 27A.3201.

The mortgage provides that:

"Mortgagor covenants and agrees:

* * *

"2. In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments levied or to be levied against said premises that will next become due, (and) an installment of the premium or premiums that will next become due to renew the insurance on said premises * * *."

Paragraph eight of the mortgage further provides that in the event of default "in the performance of any of the covenants or conditions hereof", mortgagee may accelerate the full indebtedness and sell the property pursuant to the statute.

It is plaintiff's argument that the above provisions in the mortgage constitute a covenant, the remedy for breach of which is an action for damages or an injunction.

Defendants, on the other hand, contend that paragraphs 2 and 8, when read together, make monthly payments into escrow a condition, and default thereon allows foreclosure by advertisement.

Commonly, a covenant is regarded as an assurance that something will be done in the future, while a condition is regarded as "a fact or event that affects legal relations; it is a cause of some change in those legal relations". 3A Corbin, Contracts, sections 627, 633. The remedy for breach of a covenant is damages or an injunction, whereas the remedy for default on a condition

subsequent is termination of the contract. Capitol Land Co v Zorn, 134 Ind App 431, 433; 184 NE2d 152, 158 (1962); 17A CJS, Contracts, sections 339, 399.

The question whether a particul provision in a contract is a covenant or, alternatively, a condition, does not admit of an absolute answer. Rather, the resolution of the issue depends in large part on the contract, with the intent of the parties being the paramount consideration. McIntosh v Groomes, 227 Mich 215; 198 NW 954 (1924).

Recognizing the parties' prerogative to provide for their own contract, we said in White v Burkhardt, 338 Mich 235, 239; 60 NW2d 925 (1953):

> "Foreclosure of mortgages by advertisement and sale has been in use in this State for about 100 years, and is well understood. Such statutory foreclosures should not be set aside without some good reason therefor. Markoff v Tournier, 229 Mich 571, and Detroit Trust Co v Agozzinio, 280 Mich 402, 496. Statutory foreclosures are a matter of contract, authorized by the mortgagor, and ought not to be hampered by an unreasonably strict construction of the law. Lee v Clary, 38 Mich 223, and Peterson v Jacobs, 303 Mich 329, 335."

We are convinced that under the terms of the contract before us, plaintiff has defaulted on a condition. By refusing to pay monies into escrow, plaintiff failed to perform a covenant the performance of which was a condition of the contract. 3A Corbin, supra, sections 633, 635. Plaintiff agreed that Metropolitan would have the option of foreclosing pursuant to the statute if she did not perform her covenant. The remedy

is concededly a harsh one, but "harshness or hardship alone will not defeat a foreclosure". Schechtman v Grobbel, 226 So 2d 1, 3 (Fla Dist Ct App, 1969)

Despite plaintiff's insistence to the contrary, this case does not involve a mere technical breach by the mortgagor as was present in Schechtman, supra. In that case the Florida District Court of Appeals refused to allow foreclosure where the mortgagor paid escrow monies to a bank rather than to the mortgagee, as required by the mortgage. The court emphasized that, even though the payment was made to the wrong institution, the escrow balance was at all times current and the security of the mortgage was never in jeopardy. Here plaintiff refused to make the payments.

We agree with the trial court and the Court of Appeals that the foreclosure was licit.

Affirmed. Costs to defendant.

THOMAS GILES KAVANAGH
CHARLES L. LEVIN
MARY S. COLEMAN
G. MENNEN WILLIAMS
JOHN W. FITZGERALD
JAMES L. RYAN

EXHIBIT "B" - Filed August 9, 1979
U. S. District Court - No. 9-72789

STATE OF MICHIGAN, IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE
Civil Action No. 115-792
Virginia Cramer, Plaintiff vs.
Metropolitan Federal Savings and Loan
Association, a United State corporation,
et al, Defendants

SECOND AMENDED COMPLAINT

NOW COMES PLAINTIFF VIRGINIA CRAMER by her attorneys, Allen J. Counard and D. Lawrence Kevelighan, and in her Second Amended Complaint says:

COUNT I - BREACH OF CONTRACT

1. That she is a resident of Dearborn Heights, Wayne County, Michigan.

2. That the Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION is a United States corporation and that its principal place of business is located in the City of Detroit, County of Wayne, State of Michigan.

3. That the Defendant JAMES I. McCLINTOCK is and was Chairman of the Board of Direcors of METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION at all times pertinent hereto.

4. That the Defendant ROGER C. RICHARDS is and was President of METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION at all times pertinent hereto.

5. That the Defendant JOHN C. DENYER is and was Assistant Vice-President of METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION at all times pertinent hereto.

6. That the Plaintiff on July 29, 1963, entered into a contract to purchase property situated in the City of Dearborn Heights, County of Wayne, State of Michigan, described as follows: The East 33 feet of Lot 5 and West 25 feet of Lot 6 of Gordon Saperstein Subdivision No. 1 and part of the Southwest quarter of Section 6, Town 2 South, Range 10 East, Dearborn Township, Wayne County Michigan as recorded in Liber 80, Page 2, Wayne County Records.

7. That Plaintiff, in order to purchase the aforementioned property, borrowed from Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION Sixteen Thousand Five Hundred ($16,500.00) Dollars with interest thereon at the rate of five and three-quarters (5-3/4%) per cent per annum while not in default and seven (7%) per cent per annum during the period of any default, and Plaintiff signed a "Mortgage Note" for same dated the 29th day of July, 1963, Plaintiff thereby agreeing to pay said sum.

8. That pursuant to the aforementioned "Mortgage Note" the Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION could, at its option, in lieu of increasing the rate of interest as above provided during the period of any default, collect a "late charge" not to exceed an amount equal to four (4%) per centum of any installment which is not paid within fifteen (15) days from the due date thereof, to cover the extra expense involved in handling delinquent payments.

9. That the Plaintiff received from Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION payment cards which clearly indicated thereon that no late charges would be due during the fifteen (15) day grace period, and that Plaintiff to avoid

late charges, should pay within said fifteen (15) day period.

10. That pursuant to the terms of the aforementioned "Mortgage Note" Plaintiff expressly reserved the right to prepay installments of principal.

11. That Plaintiff, during the period July 29, 1963 through and including May 14, 1968, made one hundred thirty (130) payments of principal when only fifty-six (56) payments were regularly scheduled during said period.

12. That paragraph 2 of the aforementioned "Mortgage" agreement reads as follows:

> "In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments levied or to be levied against said premises that will next become due, an installment of the premium or premiums that will next become due to renew the insurance on said premises (as hereinafter provided) and, if any life insurance is payable or assigned to mortgagee as additional security for said indebtedness, an installment of the premium or premiums that will next become due thereon. The said installments shall be equal, respectfully, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be held by

mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single payment. If the sums so deposited shall not be sufficient to pay the taxes, assessments and premiums when the sums become due, mortgagor agrees to forthwith pay to mortgagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefor, the excess shall be credited upon principal."

13. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION estimated the amounts necessary to pay taxes, assessments and insurance on said property and added this amount to the monthly principal and interest payment and sent plaintiff payment cards for the total monthly payment due.

14. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION on various occasions breached the "Mortgage" agreement by failing to pay the taxes on the above property when due, thereby allowing said taxes to become delinquent.

15. That Plaintiff had timely paid escrow monies which were accepted by Defendant.

16. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION breach the "Mortgage" agreement by not crediting to Plaintiff's principal account escrow monies not actually paid out by the Defendant-Mortgagee during the yearly estimate period.

17. That the aforementioned payment cards stated that the payments were due on the fifteenth (15th) of each month and late charges would be added after the thirtieth (30th) of each month.

18. That the aforementioned payment cards were part of the agreement between the parties and allowed Plaintiff to have a fifteen (15) day period beyond the due date to pay.

19. That Plaintiff made payments pursuant to the sums stated on the payment cards through May 14, 1968.

20. That Defendant breached the agreement between the parties on May 23, 1968, by causing to be published in the Detroit Legal News a "Notice of Mortgage Sale" because the payment due on May 15, 1968, had not been made.

21. That Defendants "Notice of Mortgage Sale" publication of May 23, 1968, stated that " . . . on which mortgage there is claimed to be due at the date of this notice, the sum of TWELVE THOUSAND FIVE HUNDRED NINETEEN AND 37/100 ($12,519.37) DOLLARS . . . "

22. That Defendants' records showed the principal balance owing as of May 23, 1968, to be TWELVE THOUSAND FORTY-ONE AND 91/100 ($12,041.91) DOLLARS.

23. That Defendants' records showed no monies were advanced by the Defendants for taxes, assessments or insurance premiums as of May 23, 1968, the date of said foreclosure publication.

24. That the taxes, assessments and insurance premiums due or to become due on said mortgaged property are titleholder's liabilities and that plaintiff's liability for taxes, as titleholder of said property, is irrevocable, non-assignable and non-transferable.

25. That plaintiff's liability for taxes, assessments and insurance premiums is not an indebtedness owed to Defendant-Mortgagee as Defendant-Mortgagee had not advanced any of its money as payment for said liabilities as of May 23, 1968.

26. That no liabilities for taxes, assessments and insurance premiums were due or overdue as of May 23, 1968, on plaintiff-titleholder's aforementioned property.

27. That Defendants proceeded with their mortgage sale.

28. That Plaintiff, subsequent to said mortgage sale, redeemed the aforementioned property.

29. That as a result of Defendants' aforementioned acts, Plaintiff was forced to obtain a new mortgage on the aforementioned property at a higher rate of interest, that being at seven (7%) per cent per annum.

30. That Plaintiff incurred attorney fees because of the Defendants' aforementioned actions of breach of contract.

31. That the aforementioned mortgage note was originally held out to be at five and one-half (5-1/2%) per cent per annum, but that the note as signed at five and three-quarters (5-3/4%) per cent per annum

was held out by Defendants to include the additional one-quarter of one (1/4 of 1%) per cent per annum for mortgage insurance through Mortgage Guaranty Insurance Corporation (MGIC).

32. That Defendants, when estimating escrow amounts, again included amounts for mortgage insurance.

33. That Plaintiff was not furnished each and every year a statement of disbursements from her escrow account, although request therefore was made and Plaintiff was thus deprived of necessary information to easily fulfill her personal Federal Income Tax obligations in a timely and exact manner.

34. That as a result of Defendants breach of contract Plaintiff has suffered the following damages, to wit:

(a) Total difference in interest rates of plaintiff's original mortgage with defendant and her new mortgage: $5,032.30

(b) Costs of foreclosure: $1,188.74

(c) Closing costs in botaining new mortgage: $160.50

(d) Legal fees incurred to date: $2,957.30

WHEREFORE your Plaintiff prays that this Honorable Court grant judgment against the Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION on the within Count I in the amount of NINE THOUSAND THREE HUNDRED THIRTY-EIGHT and 84/100 ($9,338.84) DOLLARS.

COUNT II - ABUSE OF PROCESS

35. Plaintiff realleges paragraphs 1 through 34 of Count I.

36. That during the period July 29, 1963, through May 14, 1968, the plaintiff had at various times complained to Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION and various of its employees, agents, officers and directors about the non-timely payment of her property taxes on the aforementioned property.

37. That during the period July 29, 1963, through May 14, 1968, the plaintiff had at various times complained to the Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION and various of its employees, agents, officers and directors about what Plaintiff felt was a miscalculation of the estimates for her escrow account.

38. That Plaintiff, on or about the last part of April 1968 or the first part of May 1968, telephoned Defendant JAMES I. Mc CLINTOCK in his capacity as Chairman of the Board of Directors of METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION and PLAINTIFF informed him of the non-payment and/or delinquent payment of the property taxes on the aforementioned property and she was told there was nothing wrong with her taxes being in default.

39. That because of the aforementioned non-timely payment of the property taxes and the aforementioned claimed miscalculations of her escrow account, Plaintiff asked to pay her own obligations rather than pay the escrow sums.

40. That Plaintiff's request to pay her

own taxes, assessments and insurance because of the past actions of Defendants' was met with great resistance and a denial of her request.

41. That Plaintiff brought to the attention of Defendants the non-timely payment of her property taxes, the miscalculation of her escrow fund and their breach of the "Mortgage Note" and "Mortgage Agreement".

42. That in May 1968, prior to the foreclosure publication, Defendant JOHN C. DENYER told Plaintiff to "hire a bookkeeper and a lawyer."

43. That in the period February 21, 1968 to April 19, 1968, Plaintiff received two different sets of payment cards in addition to the set of payment cards she was then making payments with.

44. That in the early part of April 1968, Plaintiff asked Defendant JOHN C. DENYER for receipts for all disbursements from her escrow account but was denied same.

45. That Plaintiff received a letter from Defendant ROGER C. RICHARDS, dated April 25, 1968, denying Plaintiff's request for the aforementioned receipts.

46. That Defendants response to the aforementioned rightful complaints and justifiable demands of Plaintiff was to institute foreclosure by Sheriff's sale.

47. That the first said publication of foreclosure appeared in the Detroit Legal News on May 23, 1968.

48. That said first publication of Mortgage Sale was well within the aforementioned

fifteen (15) day period when no late charges would be assessed.

49. That the Defendants caused to be posted in public places a copy of said publication, to wit: in the City-County Building, Two Woodward Avenue, Detroit, Michigan, and on the aforementioned property of the plaintiff.

50. That on October 1, 1968, the Sheriff of Wayne County executed a deed to the aforementioned property to Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION who bid in on said Sheriff's sale.

51. That the Defendants maliciously, knowingly, and in a calculating manner, and in utter disregard of the aforementioned "Mortgage Note", "Mortgage" agreement, and payment cards, had preconceived the aforementioned foreclosure in a manner they knew, or should have known, was an Abuse of Process and not proper under the circumstances.

52. That in view of the past exemplary payment-record of the plaintiff, the Defendants election of the acceleration clause of the "Mortgage" agreement was unwarranted, unjust and an Abuse of Process.

53. That under the existing circumstances the institution of foreclosure by Sheriff's sale was an Abuse of Process, was harsh, unjust and unwarranted.

54. That in view of the bona fide dispute between the parties as to the calculation and handling of Plaintiff's escrow funds, the institution of foreclosure by Sheriff's sale was an Abuse of Process.

55. That in view of the prior payment record of Plaintiff, the institution of foreclosure by Sheriff's sale was an Abuse

of Process.

56. That Plaintiff believes the Defendants have not foreclosed on other mortgagors within the aforementioned fifteen (15) day period.

57. That Plaintiff believes the Defendants have not foreclosed on other mortgagors with a history of payment as exemplary as hers.

58. That Plaintiff believes Defendants acted in the unwarranted, illegal and unjustified manner herein alleged, partly because she is a single woman.

59. That Defendant ROGER C. RICHARDS wrote plaintiff a letter in August 1968 complimenting plaintiff on her exceptional payment record.

60. That all of the aforementioned acts of Defendants were malicious, were without any just or probable cause, were illegal and oppressive, and were done with a wanton and reckless disregard of the rights of the Plaintiff and with the intent of causing Plaintiff to lose her home.

61. That Defendants had an ulterior motive or purpose in exercising such use of process.

62. That the actions of Defendants damaged Plaintiff's good reputation in the community.

63. That the actions of Defendants damaged Plaintiff's credit standing in the community.

64. That the actions of Defendants caused Plaintiff much mental distress, some physical ill health, nervousness and tension.

WHEREFORE your Plaintiff prays that this Honorable Court grant judgment for general, exemplary and punitive damages against the Defendants, jointly, individually and severally, on the within Count II in the amount of ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS.

COUNT III - LIBEL AND SLANDER

65. Plaintiff realleges paragraphs 1 through 64 of Counts I and II.

66. That Defendants, on or about May 16, 1968, maliciously prepared and composed, of and concerning Plaintiff, a certain writing, to wit:

"McCLINTOCK, FULTON, DONOVAN & WATERMAN, Attys., 2150 Guardian Bldg., Detroit, Michigan 48226.

No. 01 04-6326

NOTICE OF MORTGAGE SALE--Default having been made in the conditions of a certain mortgage made by VIRGINIA CRAMER to METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, dated the 29th day of July, 1963, and recorded in the office of the Register of Deeds for the County of Wayne and State of Michigan, on the 13th day of August, 1963, in Liber 15124, of Wayne County Records, on Page 270, on which mortgage there is claimed to be due at the date of this notice, the sum of TWELVE THOUSAND FIVE HUNDRED NINETEEN AND 37/100 ($12,519.37) DOLLARS, and an attorney's fee as provided for in said mortgage, and no suit or proceedings at law having been instituted to recover the moneys secured by said mortgage, or any part thereof,

NOTICE IS HEREBY GIVEN, that by virtue of the power of sale contained in said mortgage, and the statute in such case

made and provided, on TUESDAY, THE 20th DAY OF AUGUST, 1968, at twelve o'clock noon, Local Time, the undersigned will, at the Southerly or Jefferson Avenue entrance to the City-County Building, in the City of Detroit, Michigan, that being the place where the Circuit Court for the County of Wayne is held, sell at public auction, the premises described in said mortgage, or so much thereof as may be necessary to pay the amount then due on said mortgage, including legal costs and attorney's fees, and taxes or insurance that the undersigned may pay on or prior to the date of said sale, and interest at 7 per cent per annum thereon, which said premises so to be sold are situated in the City of Dearborn Heights, County of Wayne, Michigan, and are described as:

East 33 feet of Lot 5 and West 24 feet of Lot 6 of Gordon-Saperstein Subdivision No. 1 Of Part Of The SW 1/4 Of Sec. 6, T2SR10E, Dearborn Township WCM As Recorded in L80 P2 Wayne County Records,

The redemption period as determined under Stat. Ann. 27A.3240 is one year from the time of such sale.

Dated May 23, 1968

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, A United States corporation,
Mortgagee

McCLINTOCK, FULTON, DONOVAN & WATERMAN,
Attorneys for Mortgagee, 2150 Guardian Bldg.
Detroit, Michigan 48226

67. That said writing was false in that Plaintiff was not in default on her "Mortgage Note" and "Mortgage" agreement.

68. That Defendants knew, or should have known, that said writing was false.

69. That Defendants delivered said writing to the Detroit Legal News and caused

said writing to be published on May 23 and 30, 1968; June 6, 13, 20 and 27, 1968; July 4, 11, 18 and 25, 1968; and August 1, 8 and 15 of 1968.

70. That pursuant to the Defendants malicious intent said writing was read by many and diverse persons.

71. That Plaintiff received telephone calls and mail from individuals, realtors, mortgage companies, etc., referring to said written publication, and was embarrassed and imposed upon to the extent of having various persons trespass upon her premises at various times of the day to measure, survey, appraise and inspect the premises, all of which embarrassed, humiliated, disgranced and frightened Plaintiff, in open view of her friends and neighbors.

72. That an individual asked why Plaintiff did not pay her debts.

73. That Plaintiff had great difficulty securing a new mortgage as her credit standing in the community had been defamed and impaired and that several reputable lending institutions in the community refused to lend her funds to redeem the aforementioned property.

74. That the new mortgage secured by Plaintiff bore a higher rate of interest than that with Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION.

75. That Plaintiff had, prior to the aforementioned publication, enjoyed a good reputation for payment of her obligations, delaing honestly with other parties, and being of good and upright character.

76. That immediately upon learning of the first of said publications Plaintiff demanded that Defendants cease and desist all further publications.

77. That said wrongful publication caused Plaintiff much mental distress, physical ill health, nervousness and tension.

78. That Defendants, in disregard of the demands of Plaintiff, continued to allow said publication.

79. That as a result of said publication Plaintiff sustained damages by way of increased interest on her subsequent mortgage in the amount of FIVE THOUSAND THIRTY-TWO AND 30/100 ($5,032.30) DOLLARS, attorney fees to prosecute her just, legal and rightful claims in the amount of TWO THOUSAND NINE HUNDRED FIFTY-SEVEN AND 30/100 ($2,957.30) DOLLARS, as well as damage to her personal reputation and character all as heretofore alleged in excess of NINETY-TWO THOUSAND AND NO/100 ($92.000.00) DOLLARS.

WHEREFORE your Plaintiff prays that this Honorable Court grant judgment against the Defendants, jointly, individually and severally, for general, special, exemplary and punitive damages on the within Count III in the amount of ONE HUNDRED THOUSAND AND no/100 ($100,000.00) DOLLARS.

COUNT IV - BREACH OF FIDUCIARY RELATIONSHIP

80. Plaintiff realleges paragraphs 1 through 79 of Counts I, II and III.

81. That pursuant to aforementioned paragraph 2 of the aforementioned "Mortgage" agreement Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION was to hold the escrow funds of Plaintiff interest free.

82. That Defendants were in a position of trust as regards to the handling of Plaintiff's escrow funds.

83. That there was between Plaintiff and Defendant a fiduciary relationship as regards the escrow money forwarded at various times by Plaintiff to Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION.

84. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION did not pay taxes on the aforementioned property and did not credit Plaintiff's principal account with sums not expended in a twelve-month estimate period and thus breached the aforementioned fiduciary relationship and position of trust.

85. That the Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION held Plaintiff's funds beyond a twelve-month escrow estimate period without paying Plaintiff interest on said funds thereby breaching the aforementioned fiduciary relationship and position of trust.

86. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION utilized the escrow funds of Plaintiff for its own purposes and use while not applying said escrow funds for the benefit of Plaintiff as it was bound to do thereby breaching the aforementioned fiduciary relationship and position of trust.

87. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION utilized the escrow funds of Plaintiff for its own purposes and use while not paying Plaintiff interest for the use of said funds thereby breaching the aforementioned fiduciary relationship and position of trust.

88. That Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION demanded from Plaintiff escrow funds in excess of the funds necessary to pay taxes, assessments and insurance on the aforementioned property during a twelve-month escrow estimate period, thereby breaching the aforementioned fiduciary relationship and position of trust.

89. That the acts alleged in this Count IV were done in a calculating, malicious and deliberate manner and intended to deprive Plaintiff of her rights and money and Defendant thereby breached the aforementioned fiduciary relationship and position of trust.

WHEREFORE your Plaintiff prays that this Honorable Court grant Judgment for general, special, exemplary and punitive damages against the Defendant METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION on the within Count IV in the amount of ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS.

COUNT V - INVASION OF PRIVACY

90. Plaintiff realleges paragraphs 1 through 89 of Counts I, II, III and IV.

91. That the aforementioned publications and posting of notices were unlawful and malicious and without legal right or authority.

92. That Defendants claim of "default" against Plaintiff was false and any claim of deficiency or default because of claimed escrow shortages was disputed by the Plaintiff and known by the Defendants to be so disputed.

93. That said publications and posting of notices cause Plaintiff humiliation, embarrassment, exposure to public contempt and ridicule, disgrace, and mental distress.

94. That the aforementioned acts of Defendants were wanton and irresponsible, and warrant an award of exemplary damages.

95. That Defendants knew, or should have known, the damages that would result from the aforementioned publication and posting of notices.

WHEREFORE your Plaintiff prays that this Honorable Court grant judgment for general, special, exemplary and punitive damages against the Defendants, jointly, individually and severally, on the within Count V in the amount of ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS.

COUNT VI - INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

96. Plaintiff realleges paragraphs 1 through 95 of Counts I, II, III, IV and V.

97. That the aforementioned acts and conduct of Defendants amount to intentional infliction of emotional distress upon the Plaintiff.

98. That the aforementioned acts and conduct of Defendants were done in a reckless, wanton, intentional and malicious manner of ill will toward the Plaintiff with utter disregard of the rights, feeling or property of the Plaintiff.

99. That the aforementioned acts and conduct of Defendants warrant an award of general, special, exemplary and punitive damages.

WHEREFORE your Plaintiff prays that this Honorable Court grant judgment for general, special, exemplary and punitive damages against the Defendants, jointly, individually and severally, on the within Count VI in the amount of ONE HUNDRED THOUSAND AND NO/100 ($100,000.00) DOLLARS.

COUNARD & KEVELIGHAN

BY /s/ ALLEN J. COUNARD
Attorneys for Plaintiff
17663 West Ten Mile Road
Southfield, Michigan 48075
Telephone: 557-6920

DEMAND FOR TRIAL BY JURY

COMES NOW THE ABOVE PLAINTIFF and respectfully demand Trial by Jury in the above entitled cause.

COUNARD & KEVELIGHAN

BY ALLEN J. COUNARD
Attorneys for Plaintiff
17663 West Ten Mile Road
Southfield, Michigan 48075
Telephone: 557-6920

(End of Defendants' Exhibits "A" and "B")

Filed August 9, 1979 - No. 9-72789
U. S. District Court

MOTION TO DISMISS

The Defendants Metropolitan Savings Association a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, James I. MCClintock, Roger C. Richards and John C. Denyer and Co-Defendants McClintock Donovan Carson & Roach, James I. McClintock, Michael Doelle

and William P. Thrope, by their attorneys McClintock Donovan Carson & Roach hereby move this Court pursuant to Rule 12(b) (1) of the Federal Rules of Civil Procedure to dismiss Plaintiff's Complaint for Declaratory Judgment filed herein for lack of jurisdiction over the subject matter on the grounds that the matters stated therein are res judicata in that the subject matter is identical to that previously litigated in the Wayne County Circuit Court being file No. 115-792, as more particularly appears in the Brief in Support of Motion to dismiss filed herewith and the Affidavit of William P. Thrope attached hereto.

WHEREFORE, the Defendants and Co-Defendants pray that this Court dismiss the Plaintiff, Virginia Cramer's Complaint for Declaratory Judgment with prejudice together with an award of reasonable attorney fees and costs in the amount of $1,000.00.

Respectfully submitted
MCCLINTOCK DONOVAN CARSON
& ROACH
BY /s/ WILLIAM P. THORPE
(P21436) Attorneys for
Defendants and Co-Defendants
2150 Guardian Building
Detroit, Michigan 48226
963-3400

Date: August 8, 1979

Filed August 9, 1979 - No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF MOTION TO DISMISS

FACTS

The Plaintiff Virginia Cramer (hereinafter "Cramer") has litigated the subject

matter underlying her Complaint for Declaratory relief for over ten years in the Wayne County Circuit Court, the Michigan Court of Appeals, Michigan Supreme Court and finally ending with a denial of a Petition for Certiorari issued by the U. S. Supreme Court.

It is important to review the proceedings in the action initiated by Virginia Cramer in Cramer v. Metropolitan Savings Association, et al., filed in the Wayne County Circuit Court on August 12, 1968 being No. 115792. After certain preliminary motions and appeals, Mrs. Cramer was allowed to file a Second Amended Complaint, a copy of which is attached hereto as Exhibit "A". Subsequently, on March 27, 1972, a Summary Judgment was entered dismissing six counts contained in the Second Amended Complaint. The Michigan Court of Appeals upheld the Summary Judgment as to five counts and remanded one count entitled Breach of Fiduciary Duty on May 29, 1973. A Copy of the Opinion is attached hereto as Exhibit "B". The case went to trial on one count and a Judgment was entered on September 21, 1973 reflecting a jury verdict of no cause of action. Cramer again appealed and by Opinion dated June 2, 1975, the Judgment was affirmed. A copy of that Opinion of the Michigan Court of Appeals is attached hereto as Exhibit C.

Cramer then appealed to the Michigan Supreme Court for Leave to Appeal which was granted. The Michigan Supreme Court's Opinion dated October 6, 1977, reported at 401 Mich 252, 258 NW2d 20, affirmed the Court of Appeals, A copy of the Opinion is attached hereto as Exhibit "D".

Cramer then applied to the United States Supreme Court for a Writ of Certiorari which

was denied on June 12, 1978 as reported at 436 US 458, 57 L Ed 2d 1123, 98 S Ct 3072.

On July 14, 1978, Cramer filed a Complaint in the Wayne County Circuit Court being No. 78 822 879 CZ containing the same subject matter as that of the prior litigation. A copy of the Complaint is attached hereto as Exhibit E. The Complaint also named as Co-Defendants McClintock Donovan Carson & Roach, James I. McClintock, Michael Doelle and William P. Thorpe. The individuals and lawfirm represented the Defendants in the initial action.

The Defendants and Co-Defendants filed a Motion for Accelerated and Summary Judgment and the same was granted by Judgment dated September 8, 1978, a copy of which is attached hereto as Exhibit "F". The matter is now pending in the Michigan Supreme Court on an interlocutory appeal. The subject matter of all litigation including the instant case arises out of a mortgage executed by Mrs. Cramer dated July 29, 1963, her subsequent failure to comply with paragraph 2 of the mortgage concerning payment of escrow and the foreclosure action taken by Metropolitan. The matter has been litigated for over ten years.

ARGUMENT

Cramer's Complaint should be dismissed for lack of jurisdiction over the subject matter on the grounds that the subject matter is res judicata and/or collaterally estopped.

It is evident from Cramer's pleadings, the Second Amended Complaint and decision reported at 401 Mich 252 that the underlying controversy is identical. She now

attempts to use the Civil Rights Act, 28 USCA 1983 to relitigate the matter. However, the law is clar that she cannot us that act to relitigate issues decided in state court. In Coogan v Cincinnati Bar Association, 431 F2d 1209 (1970 involving disbarment proceedings, the Court stated at p. 1211:

> The Civil Rights Act was not designed to be used as a substitute for the right of appeal, or to collaterally attack a final judgment of the highest court of a state and relitigate the issues which it decided.
>
> The final judgment of the Supreme Court is conclusive and Coogan is precluded by the doctrine of res judicata from relitigating not only the issues which were actually involved in the disbarment proceeding, but also the issues which he might have presented. Burton, Inc. v Durkee, 162 Ohio St. 433, 438, 123 N.E. 2d 432 (1954)

In P I Enterprises, Inc. v Cataldo, 457 F2d 1012 (1972), the First Circuit Court of Appeals upheld a district court dismissal of a complaint on the grounds of res judicata and collateral estoppel holding that a state supreme court was competent to decide constitutional issues. Citing Coogan, supra and stating at p. 1015

> A complaint under the Civil Rights Act does not provide the springboard for an unhappy state litigant to raise federal claims de novo in federal court.

P I Enterprises, supra, also involved a conspiracy allegation under 42 USCA 1985.

In the companion cases of Fortune v Mulherrin and Cournoyer v Town of Lincoln, 533 F2d 21 (1976), the First Circuit held that a federal court had no jurisdiction to review, respectively, a state court custody proceeding or a decree involving a zoning ordinance under the guise of the Civil Rights Act. In Fortune the Court stated at p. 22:

> Appellant Fortune makes out no case by claiming that the New Hampshire courts applied an unconstitutional standard in awarding custody of his child to its mother. Fortune has been heard in the state court, and the allegation that an unconstitutional result has been reached 'does not vest the (federal courts) with jurisdiction to review the state proceedings' collaterally. Atchley v. Greenhill, (S.D. Tex.), 1974, 373 F Supp 512, cert denied (2/23/76) 424 U.S. 915, 96 S Ct 115, 47 L Ed 2d 320; cf. Angel v Bullington, 1947, 330 U.S. 183, 67 S Ct 657, 91 L Ed 832. His claims for damages are barred by judicial immunity, Pierson v Ray, 1967, 386 U.S. 547, 553-54, 87 S Ct 1213, 1217, 18 L Ed 2d 288, 294 or otherwise lack merit.

It is interesting that the Court in Cournoyer, supra, noted that plaintiff cited no case even plausibly supporting federal jurisdiction and awarded double costs.

For the reasons stated above, Cramer's Complaint should be dismissed with prejudice together with an award of reasonable costs and attorney fees.

Respectfully submitted,
McCLINTOCK DONOVAN CARSON & ROACH, By /s/ WILLIAM P. THORPE (p 21436) Attorneys for Defendants and Co-defendants

Dated:
Aug 8, 1979

Filed September 26, 1979 - No. 9-72789
U. S. District Court

OPPOSITION TO MOTION TO DISMISS
MOTION TO STRIKE SHAM AND FALSE PLEADINGS

Now comes Virginia Cramer, Petitioner and Defendant in wrongful foreclosure action and moves this Honorable court to strike pleadings (Motion to Dismiss) as filed by Attorney William P. Thorpe on behlaf of Defendants Metropolitan Federal Savings and Loan and on behalf of Co-Defendants McClintock Donovan Carson & Roach, and Petitioner Virginia Cramer says as follows:

A. That the "Motion to Dismiss" is sham and false where Defendants and Co-Defendants allege "lack of jurisdiction over the subject matter on the grounds that the matters stated therein are res judicata in that the subject matter is identical to that previously litigated in the Wayne County Circuit Court being file No. 115-792"

B. That the "Motion to Dismiss" is sham and false for the reason that Wayne County Circuit Court file No. 115-792 contains no subject matter and no remote identity to the Petitioner's Complaint filed in the Federal District Court, herein shown as:

Preamble
1. Jurisdiction and venue, Pages 1 thru 5
2. Cause of action and federal intervention Pages 5 through 6
3. Wrongful foreclosure, Slander of Title Pages 6 through 8
4. Actual Controversy - State Action involved, Pages 8 through 10

5. Willful and Malicious Tort, Pages 10 through 11
6. Fraud, Concealment and Deception, Attorney Malpractice (Selburn and Counard) Pages 11 thru 18
7. Fraud, Concealment or Deception, Attorney Malpractice (McClintock Donovan Carson & Roach, Michael Doelle and William P. Thorpe) Pages 18 thru 25
8. Conspirators, Obstructionists of Justice (Selburn, Counard, McFadden) Pages 25 through 27
9. Actual Controversy - Federal Action Involved (Federal Home Loan Bank Board) Page 27 thru 31
10. Injunctive relief against Michigan Supreme Court Justices, Page 31 through 35
11. Measure of Damages, Page 35

C. That the defendants and co-defendants "Motion to Dismiss" is sham and false, for the reason that the prior action Wayne County Circuit Court file No. 115-792, contained as follows:

Count I - Breach of Contract
Count II - Abuse of process
Count III - Libel and slander
Count IV - Breach of Fiduciary Relationship
Count V - Invasion of Privacy
Count VI - Intentional Infliction of Emotional Distress

and that the Michigan Court of Appeals dismissed Counts I, II, III, V, and VI, as pertaining to"wrongful foreclosure" and which said "wrongful foreclosure" was never heard and never allowed to be heard, and where the attorneys (Selburn and Counard) in legal malpractice, negligence and misconduct failed to seek the setting aside of the foreclosure and/or failed and neglected to take issue with the "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, alleging

that "Plaintiff is in default" of her mortgage, due to the misconduct, legal malpractice and fraud perpetrated upon the court by attorneys Michael Doelle and McClintock Donovan Carson & Roach, the attorneys and law firm who instigated and commenced the wrongful foreclosure pursuant to Michigan Foreclosure by Advertisement Statute MCLA 600.3201 et seq.; MSA 27A.3201 et seq., against your Petitioner Virginia Cramer where said Virginia Cramer was never in "default" of the mortgage contract and had never failed to pay "escrow" moneys each and every month as a "condition" of - said mortgage contract, prior to the foreclosure date of May 23, 1968. That the attorneys your Petitioner hired failed and neglected to take issue with the Foreclosure by Advertisement statutory provisions, and failed and neglected to take issue with the terminology "deficiency" as worded in said mortgage contract.

D. That the matter of Petitioner's so-called "default" in her mortgage has never been litigated; -That the Wayne Circuit Court in No. 115-792 (prior action) heard only Count IV, Breach of Fiduciary Duty, and would not allow your Petitioner to be heard on any matter remotely related to "wrongful foreclosure" as pertaining to all other counts of the Complaint prepared and filed by her attorney Allen Counard.

E. That the "foreclosure" matter has never been litigated and Petitioner Virginia Cramer has never been heard and never allowed to be heard on said "foreclosure" matter and which the Defendants and their attorneys, Co-Defendants herein, instituted and instigated under the said Michigan Fore-Closure by Advertisement Statute, MCLA 600. 3201 et seq., MSA 27A.3201 et seq.

F. That the transcript of proceedings on Count IV, Breach of Fiduciary Duty, shows as follows: (Volume II, August 20, 1973)

—

at 407a -- Mrs. Cramer: This case has been in the court of appeals twice. It was first instituted in August of 1968. That is five years ago, and this is the first day that I have had in court to present my side. The very first day. I have waited a long time to be heard."

—

at 409a -- Mr. Thorpe: If she is testifying, the matter of foreclosure has no relevance to this proceeding and I wish it stricken from the record and her instructed not to testify to it.

—

at 410a -- The Court: " * * * The Court has Count IV before it and you will be confined to Count IV."

—

at 431a -- Ms. Cramer: " * * * So Mr. -- Denyer refused to give me an accounting of what they claimed the deficiency was and at the same time upon re-- receipt of a letter which I will produce from the president of Metro where they refused to furnish receipts, I went to the Metro offices personally to see the president (Mr. Richards), Mr. Denyer(and) their controller and I took a friend with me, a lady friend, and I just said that I was very at a loss to understand why I should be paying escrow moneys to them when they were failing to meet my obligations out of my escrow money and that I thought I could handle my money in a much better fashion than in paying the escrow money to handle for me and I asked to pay my own taxes and insurance rather than to pay it in escrow

on deposit as a trust fund with Metro and they didn't answer me; they didn't give me an answer of yes, no or maybe or whatever. They simply foreclosed."

at 432a -- Mr. Thorpe: Objection, your Honor. The foreclosure is not here in issue.

The Court: I will sustain the objection.

* * *

Ms. Cramer: Well, in any event, at the time of the foreclosure there was --

Mr. Thorpe: Objection, your Honor.

Ms. Cramer: There was --

The Court: Sustain the objection. The jury will disregard the statement.

Ms. Cramer: -- in escrow there was a surplus balance in my escrow account of approxmately $200 surplus in my escrow account at the time that they foreclosed.

Mr. Thorpe: Objection, your Honor.

The Court: The jury will disregard --

Ms. Cramer: That indicates the time, your Honor.

The Court: Just tell the time, when it was.

Ms. Cramer: As I recall, your Honor, the foreclosure took place in May --

at 433a -- Mr. Thorpe: Objection.

The Court: We are not interested in the foreclosure.

Ms. Cramer: May 23, 1968.

at 434a -- Ms. Cramer: * * * Also they have allocated in their account an item of $296.30 as attorney fees out of my escrow on the foreclosure --

Mr. Thorpe: Your Honor, objection to the foreclosure --

The Court: The jury will disregard it.

at 438a -- The Court: The Court of Appeals has said the whole issue is Count 4 and that is still open. The Court of Appeals has foreclosed this proceeding on any of the other counts.

at 441a -- Ms. Cramer; "Also here, your Honor, in the deposition the president of Metropolitan has said as to the escrow funds: "Mr. Richards, whose money do you consider that is?"

"That is the borrower's funds."

But that is what they foreclosed on."

The Court: Are you ready to take the stand?

at 448a -- Q. (By Mr. Thorpe) The crux of this lawsuit concerns the handling of certain escrow funds. Did you ever pay out of your own pocket other than into escrow any of the taxes on your house? In other words, did you ever go down to the county treasurer's office or city treasurer and actually pay the taxes yourself?

A. (by Ms. Cramer) Yes.

Q. You did?

A. Yes

Q. Do you have a receipt for it?

A. Yes, I have a cancelled check.

Q. What year was that?

A. That was in 1968.

Q. That was after this mortgage had terminated, wasn't it?

A. After the foreclosure was published.

Mr. Thorpe: Objection to the word "foreclosure."

Ms. Cramer: After the foreclosure was published. In other words, after May 23, 1968. That was the date of the foreclosure and that is how I associate my paying my taxes directly to the city treasurer in Dearborn Heights where this piece of property is located.

Q. Did you ever go down and pay them before that?

A. No, because I never got the tax bills and you can't pay taxes unless you get the tax bills and Metropolitan nor the city treasurer would furnish me with the tax bills.

at 455a -- Ms. Cramer: I had gone to Dearborn Heights City Treasurer's

office who have the authority to send the bills out. I had paid the taxes in the amount of $101.33 that were due in July of 1968 after Metropolitan had taken legal proceedings to repossess my home --

Mr. Thorpe: Objection, your Honor.

The Court: I will instruct the jury to disregard that statement. You can speak of times as far as dates are concerned.

Ms. Cramer: May 23, 1968 Metropolitan Federal took legal action against me --

Mr. Thorpe: Objection, your Honor.

The Court: You can state the date. We don't have to talk about legal action.
* * *

Ms. Cramer: I associated the date of May 23 --

The Court: You may mention that.

Ms. Cramer: May 23, 1968. What relevancy does it have unless I clarify it to the Court?

The Court: You can use the date if you want.

G. Thus, the court can see that the "foreclosure matter" has never been heard and never allowed to be heard.

H. That your Petitioner has been systematically and continuously denied the opportunity to be heard on said "foreclosure" and she has been denied due process of law by the denial of a day in court on said "fore closure" matter, in violation of the Fourteenth Amendment to the United States Constitution.

I. That the Defendants-Metropolitan by their attorneys have assumed the position that state action or exertion of power is not involved in the foreclosure by Advertisement Statute, MCLA 600.3201 et seq.; MSA 27A.3201 et seq., and yet the Defendants-Metropolitan utilized the Michigan Foreclosure by Advertisement statute to foreclose on the mortgagor's own moneys (for escrow) for their own self-dealing, in an excessive amount, and where there were no taxes due, no insurance due, none billed, none assessed and none unpaid; and further, there was no "deficiency" in escrow and instead there was a surplus credit balance in the mortagor's (Virginia Cramer) account.

J. The matter of the "foreclosure" has never been litigated and your Petitioner has never been heard and has never had a day in court to be heard in the State courts.

K. That attorney Mr. William P. Thorpe (P21436) as attorney for Defendants (Metropolitan) and Co-Defendants (members of McClintock Donovan Carson & Roach,) continues incessantly to misrepresent, mislead and falsify matters to the court and he continues to perpetrate fraud upon the court.

L. Where the court will examine Mr. Thorpe's pleadings, the court will find that Mr. Thorpe shows no skills in the law and the totally irrelevant cases he cites is an unreasonable burden on the court and upon your Petitioner, where Mr. Thorpe misrepresents the law, and where Mr. Thorpe misrepresents the facts to the court; there is no question that Mr. Thorpe's pleadings should be stricken from the records and the court should refuse to consider Mr. Thorpe's pleadings.

M. That Mr. Thorpe's pleadings only give out a powerful, obnoxious odor of mendacity filled with prevarications, misrepresentations and downright false facts and omissions of the facts.

N. That Mr. Thorpe's pleadings of misrepresentations and false facts and omissions of facts, procedurally and otherwise, have been a constant occurrence in the State courts, and which occurred also in his "Brief for Respondent in Opposition" in the Supreme Court of the United States, where Mr. Thorpe falsely states as follows:

Page 3 = "On August 16, 23, 30, and September 6, 1968, hearings were held in the Wayne County Circuit Court on the temporary restraining order * * * "

There was only one hearing and that was on September 6, 1968, and on those other dates there were no hearings and no record and no transcripts made because the Wayne Circuit Court judge (Murphy, now deceased) only helled at your Petitioner to hire a lawyer, and then when Petitioner hired Mr. Selburn there was only the "proceedings" on September 6, 1968, where mortgagor-Virginia Cramer was not allowed to be heard, and she was denied the opportunity to be heard, and which resulted in the "Order Dissolving Temporary Restraining Order" dated September 27, 1968, which the Michigan Supreme Court has falsely stated to be as "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." There were no findings of fact. The plaintiff-mortgagor-Virginia Cramer was not allowed to be heard. The "Order Dissolving Temporary Restraining Order" was not a "judgment" and there was no "default" shown. (see 401 Mich 252) Further, the Michigan Court of Appeals in Cramer v Metropolitan, et al,

said "Mrs. Cramer's evidence was not heard." as reported at 34 Mich App 638, dated July 22, 1971. (emphasis added).

O. Further, Mr. Thorpe's fraud and deceit is shown in his "Brief for Respondent in Opposition" (among many other instances) in the Supreme Court of the United States, as follows:

Page 3 (at bottom) "Subsequently, during the numerous proceedings below, the trial courts determined that Mrs. Cramer had defaulted under the terms and conditions of the mortgage, that Metropolitan as mortgagee was entitled to commence foreclosure of the mortgage pursuant to the power of sale and that Metropolitan had complied with the Michigan statute governing nonjudicial foreclosures of real property." This statement by Mr. Thorpe is utterly false and for the reason that:

1. There was no default by the mortgagor; the defendants Metropolitan have never shown any default to allow such foreclosure.

2. There was no "deficiency" in mortgagor's "escrow" account; there was, instead, an "escrow" surplus credit balance, at the time of the foreclosure.

3. No "deficiency" was claimed in the mortgagee's Bidding Statement to the Sheriff (Wayne County), as to "escrow".

4. That the "escrow" surplus balance in mortgagor's "escrow" account was applied as a reduction of the principal balance in the Bidding Statement to the Sheriff as prepared by Metropolitan or their attorneys, dated October 1, 1968, and where Metropolitan withheld $30.10 of mortgagor's "escrow" funds which was received by Mortgage Guaranty Insurance Corporation (MGIC) in December, 1968,

considerably after the Sheriff's sale of October 1, 1968.

P. That Mr. Thorpe's only skill in this entire matter is to misrepresent and to perpetrate fraud upon the court, which he is very adept at doing, by his fraud and deceit.

WHEREFORE Petitioner Virginia Cramer prays that this Honorable court will strike the pleadings filed by Mr. William P. Thorpe, pursuant to Rule 11 and 12 on the grounds that said pleadings are a complete sham and false, and that this court exercise its discretionary powers under local court Rule VI (4), as follows:

Rule VI. Discipline of Attorneys.

(a) The Chief Judge shall have charge of all matters relating to the discipline of members of the Bar.

(b) The Court may make an order in a disciplinary proceedings disbarring, suspending or censuring, or taking such other action as justice may require, with respect to a member of the Bar of this Court, or an attorney admitted under Rule V (d) hereof:

* * *

(4) who is guilty of conduct unbecoming a member of the Bar of this Court. Such conduct shall be deemed to consist of fraud, deceit, malpractice, or violation of the Canons of Eithics of the American Bar Association or of the Michigan State Bar Association.

* * *

(d) Cases within subdivision (4) of paragraph (b) shall be presented to the Chief Judge, and if he deems the charges of professional misconduct

of sufficient weight, he shall refer them for preliminary investigation and recommendation to the Michigan State Bar Association and, in his discretion, to the United States Attorney. The recommendation shall be presented to the Chief Judge.

Dated:
September 20, 1979

/s/ VIRGINIA CRAMER
Petitioner in pro per
Defendant in wrongful foreclosure

OPPOSITION TO MOTION TO DISMISS

Petitioner (defendant in wrongful foreclosure) opposes the Defendants (Metropolitan) and Co-Defendants (attorneys for Metropolitan) motion to dismiss for "lack of jurisdiction over the subject matter" and as more fully opposed and objected to by your Petitioner in her "Motion to Strike Sham and False Pleadings of Defendants and Co-Defendants by William P. Thorpe" submitted and attached hereto, and incorporated herein by reference, and Petitioner (defendant in foreclosure) says:

1. (a) That the said Defendants and Co-Defendants have consistently claimed that they "are bound by (Federal) regulations (promulgated by the Federal Home Loan Bank Board) pursuant to 28 USCA 1461, 1464 et seq. to require and maintain "escrow" funds payable by mortgagors for the prepayment of taxes, insurance and other assessments that may become due on the real property mortgaged."

(b) That the said Defendants and Co-Defendants also have consistently claimed that there is no law requiring the mortgagee (lending institution) to pay taxes

and insurance with the "escrow" funds so collected, and that the failure of the mortgagee to utilize said "escrow" funds belonging to the mortgagor for payment of taxes and/or insurance is not a violation of any law.

(c) That the mortgage contract (a mass contract) requires the mortgagor to pay "escrow" funds to the mortgagee, otherwise the mortgage loan is not available.

(d) That the mortgagee (lending institution) utilized the Michigan Foreclosure by Advertisement Statute, MCLA 600.3201 et seq., MSA 27A.3201 et seq. to foreclose on excessive amounts for the "escrow" account while there was an "escrow" surplus credit balance in mortgagor's "escrow" account; there was no deficiency at the time of the foreclosure; the mortgagee had failed consistently to pay the mortgagor's obligations for taxes and insurance timely, and while the said mortgagee utilized said "escrow" for self-dealing purposes and investing the "escrow" for profit which they admit.

(e) That the mortgagee foreclosed the mortgage loan on said excessive "escrow" amount, without notice, without prior demand, when there were no taxes due, no insurance due, no other assessments due, none were assessed, none were billed and none were unpaid; and foreclosed during the 15-day forebearance or waiver period of the mortgage note and refused to accept any moneys from the mortgagor after said foreclosure publication date of May 23, 1968.

2. That Petitioner's payment record on said mortgage loan eas exemplary, and that she never failed to pay "escrow" each and every month, and which the Defendants (Metropolitan) credited her "escrow" account with payments each and every month without fail for the entire period of the mortgage up to and including May 14, 1968, and foreclosed the mortgage loan on/or about May 16, 1968, when Petitioner's May 15, 1968 payment was not paid on said date of May 15, 1968, and during the period when your Petitioner was disputing the "excessive" requirements by said mortgagee (Metropolitan) and during the 15-day forebearance or waiver period of the mortgage note, with the first publication dated May 23, 1968.

3. That these matters were never litigated in the State courts, as above-whoen and there is no record of any testimony in the State courts relative to the matters herein, and as to those Counts contained in the Complaint for Declaratory Judgment, incorporated by reference herein; that the Defendants (Metropolitan) and their attorneys (Co-Defendants herein) have never offered any testimony in the State courts relative to the matters shown in Petitioner's Preamble and Complaint for Declaratory Judgment; and that the said Co-Defendants (attorneys for Metropolitan) and the State courts have prevented, precluded, prohibited and inhibited your Petitioner from having a day in court to testify as to the matters in Petitioner's Preamble and Complaint relating to the said "foreclosure" matter. Therefore, the matter is not res judicata for the reason that your Petitioner has never been heard and never allowed to be heard, to date, as to the "foreclosure."

4. That the Defendants (Metropolitan) and their attorneys, Co-Defendants herein,

have never submitted any Exhibits, any accountings of the foreclosure figures, nor any testimony in support of the said-foreclosure, in the State court "proceedings."

5. The subject matter of "foreclosure" has never been litigated in the State courts, and that the matter ests in the State courts pertaining only to the Michigan Foreclosure by Advertisement Statute, MCLA 600.3201 et seq.; MSA 27A.3201 et seq., as a non-judicial foreclosure.

6. That your Petitioner is the Defendant in the non-judicial foreclosure, for the reason that the mortgagee (Metropolitan) and their attorneys, McClintock Donovan Carson and Roach, (formerly known as McClintock Fulton Donovan & Waterman) initiated and instigated the "wrongful foreclosure" under the provisions of MCLA 600.3201 et seq.; MSA 27A.3201 et seq.

7. That the attorneys for said mortgagee (Metropolitan) held their pleading by their "Brief for Respondent in Opposition" in the Supreme Court of the United States to said non-judicial foreclosure and the power of sale contained in the mortgage, and on page 7, of said Respondent's Brief, it shows:

> "The option to foreclosure non-judicially is a contract remedy long recognized in Michigan and the courts have recognized the parties' prerogative to so provide."

8. That your Petitioner (defendant in wrongful foreclosure) was never in "default" of said mortgage contract and mortgagee (lending institution) foreclosed on moneys for "escrow" which were not an indebtedness and not a debt, without prior notice, and

during the forebearance or waiver period of the mortgage note. These matters have never been litigated in the State courts at any level.

9. That the subject matter is not "res judicata" and not collaterally estopped, and that the denial of certiorari (in the Supreme Court of the United States) makes no precedent and imports no expression of opinion on the merits of case.

10. Further, since attorney William P. Thorpe relies on res judicata (erroneously) and/or collateral estoppel (erroneously) where by he contradicts himself by relying on the denial of certiorari (in the Supreme Court of the United States) see his "Brief for Respondent in Opposition" dated May 22, 1978, where he states therein, as follows:

Page 6 - "MATTERS NOT RAISED IN THE PROCEEDINGS BELOW NOT GROUNDS FOR GRANTING CERTIORARI

> Mrs. Cramer, in her Petition, for the first time in the lengthy proceedings underlying this matter, has alleged violation of the anti-trust, civil rights laws, and other possible theories not specifically enumerated. Such claims have not been duly raised below and should not be raised on certiorari."

11. The denial of certiorari (in the Supreme Court of the United States) imports no expression of "res judicata" and imports no collateral estoppel of the matters asserted in your Petitoner's Preamble and Complaint for Declaratory Judgment and the relief sought, for the reasons that said matters have never been heard and never allowed to be heard. (State Bar of Michi-

gan v. Brotherhood of R. R. Trainmen, 1970, 174 NW2d 811, 383 Mich 201, revd. 91 S. Ct. 1076, 401 U. S. 576, 28 L Ed 2d 339.)

WHEREFORE your Petitioner (defendant in wrongful foreclosure) prays that this Honorable court will deny the Defendants (Metropolitan, et al) and Co-Defendants (attorneys for Metropolitan) motion to dismiss and deny attorney fees and costs.

Respectfully submitted,

/s/ Virginia Cramer, Petitioner in pro per, Defendant in wrongful foreclosure

Dated:
Sept. 20, 1979

BRIEF IN SUPPORT OF MOTION TO STRIKE ~~SHAM~~ AND FALSE PLEADINGS (OF DEFENDANTS AND CO-DEFENDANTS BY WILLIAM P. THORPE)

AND IN OPPOSITION TO MOTION TO DISMISS

Petitioner-Cramer (defndant in wrongful foreclosure action) does not accept Co-Defendant-Attorney-Thorpe's "facts" for the reason that attorney-Thorpe is misrepresenting and omitting matters, and which the Court should be apprised and fully informed of.

FACTS

The subject matter underlying Petitioner-Cramer's Complaint for Declaratory Judgment is that where Petitioner-mortgagor had an exemplary payment record on her mortgage loan with Metropolitan Federal Savings and Loan Association, and Petitoner-mortgagor never failed to pay "escrow" funds and that she regularly and conscientiously made payments to the mortgagee (Metropolitan) each and every month, without fail, of principal,

interest and "escrow" according to the monthly-installment "payment cards" which Metropolitan furnished to her, said Metropolitan-mortgagee foreclosed the mortgage loan (pursuant to the Michigan Foreclosure by Advertisement, MCLA 600.3201 et seq.; MSA 27A.3201-et seq.) for the reason that mortgagor-Cramer complained to said mortgagee (Metropolitan) that:

1. Excessive amounts of "escrow" were being required and inconsistent with the terms and conditions of the mortgage covenant and agreement

2. The mortgagee (Metropolitan) failed to furnish proper statements of account and/or omitted and neglected to furnish statements of account.

3. The mortgagee (Metropolitan) failed and neglected to furnish receipts or copies of receipts showing what amounts and to whom the Mortgagor's "escrow" moneys were being paid, if any.

4. The mortgagee (Metropolitan) failed and neglected to pay mortgagor-Cramer's taxes and insurance timely, and allowed said liabilities to become seriously delinquent, and jeopardizing mortgagor's security.

5. Mortgagor-Cramer never was furnished with any tax bills or insurance bills, and she never saw any such bills during the entire period of the mortgage-loan for more than 56 months, prior to the foreclosure.

6. When mortgagor-Cramer asked to be permitted to pay her own liabilities of taxes and insurance, said mortgagee (Metropolitan) yelled and screamed at her to "hire a bookkeeper and a .

lawyer" and without any prior notice or demand, the said mortgagee (Metropolitan) initiated foreclosure by advertisement, and thenceforth, refused to accept any moneys from Mortgagor-Cramer "on account of the foreclosure."

On August 12, 1968, by her own self-help means Cramer filed a Complaint (Wayne No. - 115-792) and obtained a temporary restraining order with an order to show cause why a preliminary enjoining order should not be granted. On August 16, 1968 (the date set for the show cause hearing) Judge Thomas J. Murphy would not allow Cramer to proceed in pro per and yelled at her to "hire a lawyer". Cramer hired attorney Abel Selburn and on/or about August 20, 1968, for him to appear before Judge Murphy on the adjourned hearing date of August 23, 1968, where the matter was again adjourned and Judge Murphy instructed Attorney-Abel Selburn to "audit" Metropolitan's books.- The so-called "audit" consisted of Metropolitan (by John C. Denyer) furnishing - attorney-Selburn with an adding-machine-tape of unexplained figures. No records were produced and attorney-Selburn made no-request for any records. The next adjourned hearing date (on the Order to Show Cause) was on September 6, 1968, where no exhibits and no records were presented, only John C. Denyer was permitted to testify, and the sixteen (16) page transcript consisted of colloquy between two (2) lawyers and the judge, with a scrambling (orally) over some figures, which were inaccurate, and without any exhibits and/or evidence, Judge Murphy told the Mortgagee (Metropolitan) to "go ahead with the foreclosure." Mortgagor-Cramer was not permitted to testify, and Judge Murphy would not permit Cramer to present her "figures," as to the mortgage-loan. No other hearings were held. On

September 23, 1968, attorney-Michael Doelle (for Metropolitan) apparently prepared the "Order Dissolving Temporary Restraining Order" (which purports Cramer to be "in default" of her mortgage) and where there was never any testimony as to any "default", and said Order was entered on September 27, 1968, and no proof of service was ever filed. Cramer never saw the said "Order" dated September 27, 1968, until she looked into the Court file in about March or April of 1970, when she found out that attorney-Selburn had been deceiving her and claiming that he had filed pleadings in the said case, when, actually attorney-Selburn had filed no pleadings, absolutely none whatsoever. (Judge Murphy was deceased in December, 1969.)

Then, Cramer in pro per attempted to motion the court (before Judge Bell) for leave to file an amended complaint, and she was treated with unbelievable hostility by said Judge. Cramer then hired attorney-Allen Counard in about April or May of 1970. Cramer has never had a day in Court to prove that the mortgagee-Metropolitan had no basis for the foreclosure, and that:

a. Cramer was not in "default" of the mortgage.

b. There was no deficiency in the "escrow" account and there was, instead, an "escrow" credit surplus balance (which Metropolitan utilized after the foreclosure-sale date) and that the Sheriff's Bidding Statement showed an "escrow" credit balance which the mortgagee-Metropolitan applied in reduction of the principal balance.

c. That Cramer had an exemplary payment record and was considerably ahead in her payments, and where Metropolitan had sole control of the allocation

of payments as to principal, interest and "escrow".

d. Cramer could not rely on Metropolitan's bookkeeping for the reason that the annual statements were either not itemized and showed only "ending balances" or said statements were with errors or incomplete, and their correspondence usually had errors in the figures, and/or the statements were omitted -- this occurred during the 56 months, prior to foreclosure.

Cramer hired attorney-Allen Counard in April or May of 1970, who took the matter of filing an amended complaint (denied by Judge Bell) on appeal, and where the Michigan Court of Appeals, reported at 34 Mich App 638, where that court said:

"A circuit judge (not the judge who had heard the matter in 1968) entered an order denying Mrs. Cramer's request to file an amended complaint and denying her demand for jury trial; and subsequently he entered a summary judgment dismissing her complaint on the ground that the 1968 finding that she was in default made at the time the temporary restraining order was dissolved was res judicata. Mrs. Cramer appealed. We reverse and remand for further proceedings. (emphasis added)

"The summary 1968 hearing on the order to show cause was not a trial hearing. The transcript, 16 pages in length, is largely colloquy between the lawyers and the judge. One witness for Metropolitan was sworn and gave testimony. Mrs. Cramer's evidence was not heard. (emphasis added)

However, attorney-William P. Thorpe (for

Metropolitan) has repeatedly and consistently claimed the matter to be 'res judicata" because of the "Order Dissolving Temporary Restraining Order" entered on September 27,- 1968, by Judge Thomas J. Murphy, as a "finding that the plaintiff was in default" and as shown in the Michigan Supreme Court decision reported at 401 Mich 252, in the heading, as follows: "The Wayne Circuit - Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." --- and which is contrary to the Michigan Court of Appeals reversal and remanding, as shown above.

In any event, the point is: that Cramer has never been heard and never allowed to be heard, with or without a lawyer. And attorney-William P. Thorpe consistently claims "res judicata," and as pertaining to the said "Order" entered on September 27, 1968, on which date Abel Selburn (Cramer's attorney, then) did not show up for the hearing on said date of September 27, 1968, and Cramer knew nothing about it at that time.

The two (2) opinions of the Michigan Court of Appeals, dated May 29, 1973 and June 2, 1975, both, were unpublished.

The Michigan Supreme Court decision dated October 6, 1977, reported at 401 Mich 252, 258 NW2d 20, speaks for itself, and is a disaster and requires reformation.

On June 12, 1978, the Supreme Court of - the United States denied Petitioner's application for Writ of Certiorari (a copy of same has been furnished to the Federal District Court, the Honorable Robert E. DeMascio).

Cramer filed this new action on July 14, 1978, in the Wayne County Circuit Court, No. 78-822-879 CZ, and alleging fraud, concealment and/or deception (as to the prior action reported at 401 Mich 252) and that fraud has been perpetrated upon the court and upon Petitioner-Cramer and where Petitioner-Cramer is the injured party, and the subject matter is separate and independent of the prior action, contrary to attorney-Thorpe's statements. The matter is now pending in the Michigan Supreme Court, but not as an interlocutory Appeal for the reason that Defendant-Counard's attorneys claim that Petitioner-Cramer waived her appeal rights as to the "Order Setting Aside Default of Attorney-Allen Counard" and said so-called waiver of appeal rights was supposedly effective upon the court ordering $50.00 costs to be paid to Cramer. Therefore, the "Order" with costs becomes a final order and appealable as of right, and it is not an interlocutory matter. (dated Sept. 7, 1978.)

The Accelerated and/or Summary Judgment entered on September 8, 1978 is strictly because of the alleged fraud perpetrated upon the court (as pertaining to the prior action and reported at 401 Mich 252).

—

Attorney-Thorpe's allegations of "her subsequent failure to comply with paragraph 2 of the mortgage concerning payment of "escrow" is false and a sham, and the court should strike it from the records.

—

Metropolitan-mortgagee and their attorneys have never presented any figures for the court record, and Defendant-attorney-Thorpe has never disputed Petitioner-Cramer's figures.

Attorney-defendant-Thorpe's claims that mortgagor-Cramer "failed to comply with paragraph 2 of the mortgage covenant" as to "escrow" is a false statement, a fraud, a misrepresentation, deceitful, prevarication, and fraud perpetrated upon the court, and which is the reason that Mr. Thorpe has never presented or produced anything for the court record as to payments made by Cramer.

ARGUMENT

Cramer's Petitioner for Writ of Ceriorari was denied by the United States Supreme Court for the reason that fraud is alleged. The said Petition speaks for itself. (not bad for a layperson who flunked kindergarten, was it?) The subject matter is not "res judicata" and Mrs. Cramer's evidence was not heard. Cramer vs Metropolitan Federal Savings and Loan, et al, 34 Mich App 638.

Cramer is not collaterally estopped, and the "denial of certiorari makes no precedent and imports no expression of opinion on the merits of case." State Bar of Michigan v Brotherhood of R. R. Trainmen, 1970, 174 NW 2d 811, 383 Mich 201, revd. 91 S Ct. 1076, 401 US 576, 28 LEd 2d 339.

A Motion to dismiss is not a responsive pleading. Further, Defendant-attorney-Thorpe representing Metropolitan Savings and Loan, et al and Co-Defendants McClintock Donovan Carson & Roach, et al, filed no answer to Petitioner's complaint, and therefore, said defendants and co-defendants failed to plead or defend. Co-Defendant-Attorney-Thrope's motion to dismiss and objection to petition for removal of cause

should be denied.

Respectfully submitted,

/s/ VIRGINIA CRAMER
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

Filed September 26, 1979 - No. 9-72 789
U. S. District Court

OPPOSITION TO OBJECTION TO PETITION FOR REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT

OPPOSITION TO MOTION FOR REMAND TO STATE COURT

Petitioner Virginia Cramer, in pro per, Defendant in wrongful foreclosure by advertisement, in opposition to Defendants' and Co-Defendants' (Metropolitan, et al and McClintock Donovan Carson & Roach et al) objections to removal of cause and motion for remand to state court, says as follows:

1. Answering paragraph 1, Petitioner-Cramer is the Defendant mortgagor in the wrongful foreclosure by advertisement-initiated and instigated by mortgagee-Metropolitan Federal Savings and Loan, et al, and their attorneys named-in the above-captioned matter, McClintock Donovan Carson & Roach, et al, pursuant to MCLA 600.3201 et seq.; MSA 27A.3201 et seq. and the said prior action (ultimately reported at 401 Mich 252 (1977) rests in that status under the said Foreclosure by Advertisement statute; therefore, Petitioner-Cramer is and has been defending herself against the

wrongful foreclosure initiated by said mortgagee-Metropolitan. The Michigan State Courts at every level have denied your Petitioner-Defendant in wrongful foreclosure the right and/or opportunity to be heard and have denied your Petitioner a day in court on said foreclosure matter, as more fully shown in the decision reported at 401 Mich 252.

2. As Defendant in a wrongful foreclosure action, and by procedural quirk, Petitioner's position as "Plaintiff" is merely an illusion, and therefore, Petitioner is entitled to removal pursuant to 28 USCA 1441, et seq., as a mortgagor-Defendant.

3. Answering to mortgagee-Metropolitan's paragraph 3, as to their attorney's objections and their motion to remand, and who are the same firm of attorneys who instigated and initiated the foreclosure action by advertisement, instead of by a due process hearing, Petitioner also bases her opposition upon the files and records of the State Court cause, where it is evident that Petitioner-Defendant in wrongful foreclosure action has been denied a day in the State courts, and denied an opportunity to be heard in said State courts, in violation of the Fourteenth Amendment to the United States Constitution.

WHEREFORE Petitioner-Defendant in wrongful foreclosure action (Cramer) prays that this Honorable court deny the motion to remand and deny costs and attorney fees in the amount of $1,000.00.

/s/ Virginia Cramer
Petitioner-Defendant in
wrongful foreclosure,
in pro per

Dated:
Sept 20, 1979

BRIEF IN SUPPORT OF OPPOSITION TO OBJECTIONS TO PETITION FOR REMOVAL OF CAUSE TO THE UNITED STATES DISTRICT COURT and

BRIEF IN SUPPORT OF OPPOSITION TO MOTION FOR REMAND

Petitioner (Cramer) is the Defendant-mortgagor in a wrongful foreclosure action, in a State court action, and 28 USC 1441 et seq. provides for a procedure whereby a defendant may remove the same (ex parte) to the federal courts. Together with her removal petition, Cramer deposited a bond pursuant to 28 USC 1446 (d), on July 17, 1979.

In the prior action reported at 401 Mich 252, Cramer vs. Metropolitan Federal Savings and Loan, it is obvious that the State court denied your Petitioner-Cramer a day in court, and that decision (October 6, 1977) rests on the application of the Foreclosure by Advertisement statutory provisions of MCLA 600. 3201 et seq; MSA 27A.3201 et seq. and as initiated by the mortgagee-Metropolitan Federal Savings and Loan, instead of by a due process hearing.

Further, under Michigan case law, a defendant-mortgagor cannot be heard unless the said foreclosure sale is set aside. Stewart v Eaton, 287 Mich 466 (1939). However, the laws of the State do not bind the federal courts, and in Bronson v Kinzie et al, 1 How (US) 311, 11 L Ed 143, the court said,

> "The laws of a state, regulating the process of its courts, and prescribing the manner in which it shall be executed, of course, do not bind the courts of the United States whose proceedings must be governed by the acts of Congress. * * * And, although such state laws may have

been so adopted, yet they are inoperative and of no force, if in conflict with the Constitution or an act of Congress. * * * Whatever belongs merely to the remedy may be altered according to the will of the state, provided the alteration does not impair the obligation of the contract. * * * But it is manifest that the obligation of the contract, and the rights of a party under it, may, in effect, be destroyed by denying a remedy altogether; or may be seriously impaired by burdening the proceedings with new conditions and restrictions, so as to make the remedy hardly worth pursuing."
at 316, 317.
(emphasis added)

Thus, Petitioner-Cramer has never had a day in court on said foreclosure matter. Petitioner-Cramer's rights to the equal protection of the law and rights to due process of law have been ruthlessly violated, in violation of the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment is a limitation on state action, but is not a limitation on private action.

> "Removal is effected entirely by ex parte procedure * * * ."
> Milton A. Jacobs, Inc. v Manning Mfg.Corp. D.C.N.Y. 159, 171 F Supp 393

> "Removal of case from state court to federal court cannot be fraudulently evaded."
> Romick v Bekins Van & Storage Co., C.A. Tex. 1952, 197 F 2d 369

So far as your Petitioner can understand it, the State courts and the attorneys for mortgagee-Metropolitan deem this foreclosure matter as non-judicial. Petitioner-mortgagor-defendant in wrongful foreclosure has been systematically and continuously denied the right and/or opportunity to be heard.

Jurisdiction of the state action is currently pending in the Michigan Supreme Court on the new action which your Petitioner-Defendant in wrongful foreclosure commenced on July 14, 1978, and Reconsideration of Motion for Leave to Appeal was denied on May 3, 1979, but another two (2) motions are still pending in said Michigan Supreme Court.

> "To render an action removable to a federal court, it is necessary that it could have been originally brought in the federal court."
> Metcalf v Watertown, Wis. 1888, 9 S Ct. 173, 128 US 586, 32 L Ed 543.

> "The potentiality of originality is a "condition precedent" to removability of an action from state to federal court."
> In re Commercial Nat. Bank, D.C. Pa. 1942, 45 F Supp 482, affirmed 134 F2d 172

The originality of the instant action is shown as follows:

(a) There is no other case law to support a foreclosure on "escrow" funds for future taxes and insurance, not yet billed, not yet assessed, and where no taxes and insurance were due and none unpaid, and where the defendant-mortgagor was not in default of the mortgage contract where she had never failed to pay "escrow" and she was considerably ahead in her payments. (except 401 Mich 252.)

(b) There is no other case law to support a foreclosure where the mortgagee-lending institution collected said "escrow" funds from the mortgagor purportedly for the timely payment of taxes and insurance, and then, when mortgagor complained about the

excessive amounts being required (contrary to the terms and conditions of the mortgage covenant) and the said mortgagor complained that the mortgagee was failing to pay the taxes and insurance when due, and instead allowing the taxes and insurance to become seriously delinquent, and

(c) the mortgagee-lending institution yelled "What the hell do you care when we pay the taxes?" and when mortgagor-Cramer asked to be permitted to pay her own liabilities of taxes and insurance (instead of by "escrow" funds for mishandling by the mortgagee),

(d) the said mortgagee-lending institution foreclosed by advertisement, when mortgagor was not in default; the State court denied an injunction; the State Court would not permit the mortgagor to be heard and said "go ahead with the foreclosure."

A Sheriff's sale was held on October 1, 1968, without notice, and where the mortgagee sold the property to themselves. Mortgagor redeemed the property on June 5, 1969, and has suffered considerable damages, and where mortgagor maintained an exemplary payment record all during the entire 56 months of the mortgage period; and no prior notice or demand made by the mortgagee prior to the commencement of foreclosure by advertisement by publication.

In Gibson et al v First Federal Savings and Loan Association, 347 F Supp 560, 562, in speaking of redress to any deprivation of civil rights under color of state law, where state process is used to foreclose mortgages

where state action is involved, that court said: (Judge John Feikens)

> "Judicial or executive action, combined with private action, has been held sufficient to find action under color of state law, Shelley v Kraemer, 334 US 1, 68 S Ct 836, 92 L Ed 1161 (1948). But not so here, for the nexus between the state action -- possible foreclosure and execution of sale by the sheriff and the alleged taking by the defendant-- is too remote. To hold that the taking is under color of law would subject every contract or mortgage to constitutional scrutiny. Although the mortgage in question may present legal questions under federal law, enforcement of that contract by the sheriff does not transform an illegal contract into an unconstitutional one." (emphasis added)

The above cited case did not involve a foreclosure. The instant action does involve a foreclosure by advertisement, commonly referred to as a non-judicial foreclosure, under statutory provisions of MCLA 600.3201 et seq.; MSA 27A.3201 et seq, and involving a foreclosure solely on "escrow" funds, not the debt and not the indebtedness. (The above cited case also involved "escrow" Funds, but no foreclosure.)

In Charles McAllister et al., Respts., v Louis C. Drapeau, Impleaded, etc., Appt. (1939) 92 P2d 911, 125 ALR 800, 808, on the question of relief from an illegal contract, the California Supreme Court, In Banc, held:

"Assuming that a contract is fraudulent, or against public policy, or illegal, still, where the parties to it are not in pari delicto, and where public policy is considered as advanced by allowing either, or at least the most excusable of the two, to sue for relief, relief may be given to him, either against the transaction by setting it aside and restoring him to his original position, or even, in some cases, by enforcing the contract, if executory." Citing, Smith v Bach, 183 Cal 259, 191 P 14; Woodham v Allen, 130 Cal 194, 62 P 398; Daniels v Tearney, 102 US 415, 26 L Ed 187

In the instant matter, the contract is selected and printed as a mass contract and is the only contract offered for a sale of credit or extension of credit, on a mortgage-loan, and further, the mortgagee-Metropolitan and their attorneys have consistently claimed that they are bound to do nothing with said "escrow" funds which are the borrower's or mortgagor's funds.

The above shows that Petitioner-Cramer has good standing for removal and there are many and various jurisdictional areas and grounds (under the U. S. Constitution) therefor, and that this Honorable court should liberally construe Petitioner-Cramer's pro se pleadings, and that removal is proper.

For the reasons stated above, remand should be denied.

Respectfully submitted,
/s/ Virginia Cramer, Petitioner
Defendant in wrongful foreclosure, In Pro Per

Dated:
Sept. 20, 1979

Filed August 8, 1979 - No. 9-72789
U. S. District Court

MOTION FOR REMAND OF ABOVE-CAPTIONED ACTION and MOTION TO EXERCISE DISCRETION IN FAVOR OF ABSTENTION AND DISMISSAL OF DECLARATORY COMPLAINT

Now comes Defendant Allen Counard, by and through undersigned counsel, and moves this Court to remand the above-captioned cause to the Michigan Supreme Court and the Wayne County Circuit Court, and to dismiss the above-captioned action pursuant to an exercise of discretion of this Court under the abstention doctrine, for the following reasons;

1. That the above-captioned action is presently pending in the Michigan Supreme Court and before the Wayne County Circuit Court, and has not as yet been concluded;

2. That the above-captioned action has been pending for several years, and is well beyond the thirty (30) days required for removal pursuant to 28 USC 144, 1446 and therefore is untimely on the one hand and is not based upon the federal question, original jurisdiction statute 28 USC 1331, and in fact is a frivolous attempt to utilize the provisions of 42 USC 1983 and 28 USC 1343;

3. That Plaintiff claims a deprivation of due process of law and equal protection of law pursuant to the decision of the Michigan Supreme Court in Cramer v Metropolitan Savings & Loan Association, 401 Mich 252 (1977), which decision was decided by the Michigan Supreme Court on October 6, 1977, thereby making removal of this case completely untimely under 28 USC 1446;

4. That subsequent to the decision of Cramer v Metropolitan Savings & Loan Association, Plaintiff added attorney Allen Counard, represented by undersigned counsel, as an additional Defendant, on the grounds that this attorney allegedly committed malpractice in the handling of her claim;

5. That no claim against Allen Counard at any time has ever been advanced in the State action by Plaintiff pursuant to 28 USC 1343 or 42 USC 1983, with respect to the Federal Constitution, but at all times material hereto has been allegations of professional negligence only against said Defendant;

6. That therefore all allegations against Defendant Allen Counard do not formulate requisite sufficient allegations of federal jurisdiction, pursuant to 28 USC 1343 nor under 42 USC 1983-1985-1986;

7. That at no time does Plaintiff allege nor maintain that Defendant Allen Counard ever acted pursuant to color of state law or pursuant to state action, and in fact at all times material hereto, Plaintiff agrees that Defendant Allen Counard was a private attorney allegedly engaged by Plaintiff to perform legal services for her in State court and at no time pursuant to any State action whatsoever;

8. That, in the alternative, this Court is hereby requested to dismiss the above-captioned cause pursuant to the Abstention Doctrine on the grounds that the malpractice action which is presently pending in State Court against Allen Counard has not been finally adjudicated by a final decision representing the verdict of the state court. That this Court is in no position to guage the allegations of constitutional wrongdoing posited by Plaintiff against Defendant for

the reason that the State Court has not as yet reached a final decision as to Allen Counard. Therefore, it is inappropriate at this time for this Court to decide a deprivation of civil rights, since Plaintiff's case in state court has not yet been finally adjudicated, and the matter remains wholly premature and unripe for decision pursuant to 42 USC 1983, 28 USC 1343;

9. That this Court possesses discretion under Huffman v Pursue, 420 US 592 (1974), and analagous cases which hold that this Court will not interfere with a state court action pending which is, at the time of the filing of the federal action, as yet unadjudicated;

10. That therefore this Defendant requests that this Court exercise its discretion in favor of dismissal of the above-captioned action until such time as the state court action against Allen Counard is settled by verdict in favor of Plaintiff or in favor of Defendant, at which time the civil rights of Plaintiff will become much more clarified.

WHEREFORE, Defendant prays as follows:

A. That this Court act at once to remand the above captioned action to the Michigan Supreme Court, or Wayne County Circuit Court, wherever the matter is properly resting at the present time (Plaintiff has proceedings pending in both Courts at this time);

B. That in the alternative this Court act in the exercise of its discretion to dismiss the above-captioned action until

such time as Plaintiff has received a decision from state court on the propriety of her malpractice action against Defendant Counard, or until such final decision as Plaintiff's constitutional rights will become more clarified.

PLUNKETT, COONEY, RUTT, WATTERS, STANCZYK & PEDERSEN
By Thomas M. O'Leary (P18466)

Dated:
August 7, 1979

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR REMAND OF ABOVE-CAPTIONED ACTION

FACTS

Essentially this is the third lawsuit filed by Plaintiff in proper person against some or all of these Defendants.

Defendant Metropolitan Savings allegedly attempted to foreclose upon Plaintiff's home mortgage when she failed to keep her escrow account current. The first suit resulted in the decision and statement of facts found in the Cramer decision reported at 401 Mich 252.

Later, Plaintiff filed a second suit in Wayne County Circuit Court which is pending in that Court and before the Michigan Supreme Court on rehearing -- Plaintiff filed an interlocutory appeal in that case. Defendant Counard, her attorney for a short time in the first suit, was added as a Defendant. Defendant McFadden was added in the third suit, the case at bar in Federal Court. McFadden is Plaintiff's attorney in the second suit.

The second case has not reached a final Order as to Defendant, upon whose behalf

this Abstention Motion is brought.

ARGUMENT

The within Motion for Remand to the Michigan Supreme Court or Wayne County Circuit Court (Plaintiff has proceedings in both Courts), is made pursuant to the thirty (30) day requirement for a timely Petition for Removal being filed, under 28 USC 1441, 1446.

That, in the alternative, if this Court does not remand the newly filed Complaint for declaratory judgment, that this Court exercise its discretion under the following cases, to dismiss without prejudice the above-captioned action until such time as the State Court action Virginia Cramer v Allen Counard, Wayne County Circuit Court - No. 78-822-879-CZ, has been finally adjudicated, so that Plaintiff's constitutional rights, if any, will become more clarified.

See Huffman v Pursue, 420 US 592 (1974); Duke v Texas, 477 F2d 244 (CA5 1973); Younger v Harris, 401 US 37 (1971); Ahrensfeld v Stephens, 528 F2d 193 (CA7 1975).

The above cases suggest that this Court is empowered to decline to exercise jurisdiction in a civil case where there is, as here, presently pending State Court litigation which has yet to be resolved.

PLUNKETT, COONEY, RUTT, WATTERS,
STANCZYK & PEDERSEN
By Thomas M. O'Leary (P18466)
Attorney for Allen Counard

Dated:
August 7, 1979

Filed September 26, 1979 - No. 9 72 789
U. S. District Court

OPPOSITION TO MOTION FOR REMAND

OPPOSITION TO MOTION TO EXERCISE DISCRETION IN ABSTENTION AND DISMISSAL

Now comes Virginia Cramer, Petitioner-defendant in wrongful foreclosure action, in pro per, and in opposition to Defendant Allen Counard's motion for remand and in opposition to motion to exercise discretion in absention and dismissal, Petitioner says as follows:

1. Answering paragraph 1, Petitioner denies the same and avers that the Wayne County Circuit Court on October 24, 1978 denied Defendant Counard's motion for Accelerated and/or Summary Judgment, with Order and Memorandum Opinion in support thereof, and that, therefore, the action is not pending before the Wayne Circuit Court, and is pending only in the Michigan Supreme Court, Docket no. 62249.

2. Answering paragraph 2, Petitioner denies the same and avers that a new action was commenced on July 14, 1978, with causes independent and separate from the prior action, and that the Michigan Supreme Court denied her application for leave to appeal on February 7, 1979, and further, denied Reconsideration of same, with denial of other motions including Motion to Reverse, Void or Correct Defective Decision and Motion for Oral Argument, on May 3, 1979, and that subsequent motions were filed in the Michigan Supreme Court, by Attorney William R. McFadden on behalf of Virginia Cramer, and which said motions are still pending in the Michigan Supreme Court,

No. 62249; and that Petitioner filed her Petition for Removal on July 17, 1979, pursuant to 28 USCA 1441 and 28 USCA 1446, for the reason that she is the defendant in the wrongful foreclosure-action initiated and instigated by mortgagee-Metropolitan - Federal Savings and Loan Association, pursuant to the Michigan Foreclosure by Advertisement Statute MCLA 600.3201 et seq., MSA 27A.3201 et seq. and where the decision reported at 401-Mich 252 is resting, and where defendant-mortgagor (Cramer) has never been heard and never allowed to be heard.

That Petitioner asserts that the amount in controversy exeeds the value of $10,000., (original jurisdiction statute 28 USC 1331,) and that her rights have been ruthlessly violated under the provisions of 28 USC 1343 and 42 USCA 1983 and 1985, et seq.

3. That Petitioner denies that removal is untimely under 28 USC 1446; and avers that the Court may enlarge the time in its discretion, in any event; and that, as above stated, the Michigan Supreme Court matter is currently pending where Petitioner seeks reformation or voiding of defective decision reported at 401 Mich 252, and that said decision reported at 401 Mich 252 is defective, primarly, and for the reason that the attorneys (on both sides) engaged in legal malpractice, negligence, misrepresentations, concealment and fraud and deceit, in perpetration of fraud upon the court and upon the defendant-mortgagor (Cramer), and more specifically, relative to: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." -- and - "Plaintiff finally stopped the escrow payments, * * *. Plaintiff admits in her brief that she did not maintain a current escrow account." -- among other misrepresentations in 401 Mich 252. It is not frivolous.

4. That Petitioner (Cramer) agrees that Attorney Allen Counard committed malpractice, which he admits, in the handling of her claim, and further that by his gross negligence and fraud and deceit allowed and engaged in perpetration of fraud upon the court and fraud upon his client-Cramer, and while also concealing the fraud perpetrated by Client-Cramer's former attorney Abel Selburn, together with concealment of fraud perpetrated by the attorneys for Metropolitan Federal Savings and Loan Association, and, more specifically, but not limited to, with reference to and related to: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff (Cramer) was in default." - as reported in 401 Mich 252.

5. That Petitioner denies that her allegations have been only of professional negligence, and as above stated, her allegations include a conspiracy and cover-up involving all the attorneys, on both sides, whoever they may be, and not limited to only the attorneys involved and/or named herein, and more specifically in regard to the illegality and/or unenforceability of the mortgage covenant and agreement involved in the decision reported at 401 Mich 252.

6. Petitioner denies that allegations against Defendant Allen Counard do not formulate requisite sufficient allegations for federal jurisdiction pursuant to 28 USC 1343 or 42 USC 1983, 1985, 1986, and that Petitioner avers that the prior action of Cramer vs Metropolitan, et al, reported at 401 Mich 252, reeks with a lack of testimony needed in lower court "proceedings" and which prejudiced and harmed mortgagor-client-Cramer, and while attorney Abel Selburn and Attorney Allen Counard, and each of them were motivated

to manage the case for the purpose of denying client-Cramer due process of law in violation of the Fourteenth Amendment to the United States Constitution; and further, while attorney Allen Counard covered-up for the misconduct of attorney Abel Selburn who was first engaged by Virginia Cramer in said prior action reported at 401 Mich 252.

7. Petitioner-Cramer answers paragraph 7, by re-asserting that attorney-Defendant Allen Counard was motivated to manage the case for the purpose of denying client-Cramer due process of law in violation of the Fourteenth Amendment to the United States Constitution.

8. Answering paragraph 8, Petitioner-Cramer re-asserts that Attorney Thomas M. O'Leary representing attorney-defendant Allen Counard, is also motivated by conspiratorial design to deny Petitioner-Cramer due process of law in violation of the Fourteenth Amendment to the United States Constitution, and that discretionary exercise of the Abstention Doctrine, by the Court, will deny appellate processes to Petitioner-Cramer; that in the malpractice action presently pending in the State Court against attorney-Allen Counard, his only defense is the two-year Statute of Limitations which is not applicable where fraud is shown; and that pending in the State Court, as to Defendant-attorney Counard, are the following matters:

> Opposition to Setting Aside Default of Defendant-attorney Allen Counard for failure to plead and defend and where no meritorious defense was shown; and that the neglect of attorney Thomas M. O'Leary representing attorney-defendant-Counard is generally regarded as attri-

butable to his client. White v Sadler, 1957, 350 Mich 511, 87 NW2d 192.

No affidavit of facts showing a meritorious defense was submitted, in the current action, as pending in the Michigan Supreme Court, No. 62249.

Further, answering paragraph 8, Attorney Thomas M. O'Leary representing attorney-defendant Allen Counard, fails to apprise and inform this Honorable court that the Wayne Circuit Court (Honorable Charles S.-Farmer) has ruled against attorney-defendant William P. Thorpe (who also represents Metropolitan Federal Savings and Loan) as to the Statute of Limitations in this matter (in oral argument on August 24, 1978), based on Petitioner-Cramer's assertions and allegations of fraud and deceit of the attorneys involved in prior action (Wayne) 115-792 and reported at 401 Mich 252.

Further answering paragraph 8, Attorney Thomas M. O'Leary representing attorney-defendant Allen Counard fails to apprise and inform this Honorable court that in the absence of any meritorious defense for attorney-defendant Allen Counard, where Petitioner-Cramer was systematically and continuously denied due process of law, and during all of the approximate two-year period that attorney-Counard managed the-prior action (Wayne 115-792), it is ludicrous, to say the least, that attorney Thomas M. O'Leary proposes a further delay in this matter so as to further deprive Petitioner-Cramer of civil rights and due-process, especially where attorney-defendant Allen Counard failed to plead and defend in the State court and he is relying solely on the two-year Statute of Limitations, as to legal malpractice.

9. Answering paragraph 9, Petitioner-Cramer again asserts that her rights and constitutional guarantees have been ruthlessly violated, in the prior action (Wayne 115-792) and in the Michigan Supreme Court decision reported at 401 Mich 252; and that the Michigan Supreme Court in the current action is refusing to grant Petitioner-Cramer a day in court, and thereby contributing, conspiratorially, to the denial of her civil rights and violative of the Fourteenth Amendment to the United States Constitution, in denying due process of law, as to her claims of fraud, concealment and deceit of lawyers, and in denying due process of law as to the defective decision reported at 401 Mich 252, and because of the failure and neglect of the attorneys she was forced to hire who have prejudiced and harmed her. Further, that the matter involving attorney-defendant Allen Counard is not interlocutory for the reason that his attorneys are claiming that petitioner-Cramer waived her appeal rights where the Wayne Circuit Court ordered payment of costs of $50.00 to her on granting, in abuse of discretion, defendant-Counard's motion to set aside default of defendant-Counard, and which is a final matter, but which the Michigan Supreme Court has denied Petitioner-Cramer's application for leave to appeal together with motions denied as to the defective decision reported at 401 Mich 252.

Further answering paragraph 9, the Federal court cannot be said to be interferring with a state court action pending, where the Michigan Supreme Court is forcing Petitioner-Cramer to seek relief in the Federal jurisdiction.

10. Answering paragraph 10, Petitioner-Cramer asserts that dismissal of the

action before the Court determines jurisdiction is totally improper; that the Court cannot dismiss an action without first assumming jurisdiction over the controversy; that Attorney Thomas M. O'Leary cites no applicable statute or case law to permit the Court to dismiss without jurisdiction.

WHEREFORE Petitioner-Cramer prays:

A. That this Court assume jurisdiction and deny Defendant-attorney-Counard's motion to remand (especially where it is apparant that said attorneys do not know where the State case is resting, and contrary to attorney-O'Leary's statements).

B. That this Court deny defendant-attorney-Counard's motion to exercise discretion violative of the law and in violation of Petitioner-Cramer's civil rights and the right to due process and opportunity to be heard.

C. That this Court deny Defendant-Counard's motion for Abstention and Dismissal of Declaratory Complaint so that Petitioner-Cramer may not be further deprived of due process and deprived of appellate review, for the ends of justice, and for the reason that there are no appeal rights under said Abstention doctrine.

/s/ Virginia Cramer
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

BRIEF IN SUPPORT OF OPPOSTION TO MOTION FOR REMAND AND OPPOSITION TO MOTION TO EXERCISE DISCRETION IN ABSTENTION AND DISMISSAL.

FACTS

Petitioner-Cramer hired Attorney-Allen Counard in about April or May 1970 (after she had fired Attorney-Selburn in about March 1970 because of his gross negligence in failing to file pleadings in the prior action (Wayne) 115-792). Attorney-Allen Counard was supposed to have managed the case (prior action No. 115-792) during an approximate two-year period from about May 1970 through about March 1972. When the Wayne Circuit Court denied a Motion for Leave to file an Amended Complaint (in May 1970), Attorney-Allen Counard took the matter on appeal without taking into consideration an "Order Dissolving Temporary Restraining Order" fraudulently entered by Thomas J. Murphy, the first Wayne Ciruit Court judge in the prior action 115-792. The said "Order Dissolving Temporary Restraining Order" dated September 27, 1968, was prepared by the Attorney-Michael Doelle for Defendants-Metropolitan Federal Savings and Loan, as a finding of "default in her mortgage" and for which hearing date for the entry of said "Order", on September 27, 1968, Cramer's attorney, Abel Selburn, did not attend.

Subsequently, when Cramer's attorney, Allen Counard, was managing the case, the attorneys for Metropolitan consistently claimed that the matter was "res Judicata" because of the "Order Dissolving Temporary Restraining Order" dated September 27, 1968, as a "finding of default in her mortgage."

Attorney-Allen Counard failed and neglected to utilize the proper means and procedure to have the said "Order" dated September 27, 1968, voided or nullified. (and Cramer, a non-lawyer, did not know how.)

That same "Order Dissolving Temporary Restraining Order" dated September 27, 1968, is shown in the Michigan Supreme Court decision dated October 6, 1977, and reported at 401 Mich 252, as follows: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." The said "Order" was not a judgment. There were no findings of fact. No exhibits were entered into the record. The said "Order" is shown on page 67a, Volume I, of Appendix on Appeal-Appellant, as follows: (No. 57215)

ORDER DISSOLVING
TEMPORARY RESTRAINING ORDER

(State of Michigan --Circuit Court--County of Wayne) (Filed September 27, 1968)

At a session of said Court held in the Court Room in the City-County Building in the City of Detroit, on the 27th day of September, 1968.

Present: The Honorable Thomas J. Murphy,
Circuit Judge

This matter having come on to be heard on Plaintiff's Motion for Order to Show Cause why a preliminary injunction should not issue, the Court having previously entered a Temporary Restraining Order in this Matter, and the Court having examined the pleadings which have been filed, and the Court having heard testimony and examined the Exhibits which have been filed and heard oral argument by the attorneys representing

representing both parties, and the Court having determined that Plaintiff is in default on her Mortgage, and the Court being fully advised in the premises, now therefore,

It is hereby ordered and adjudged that the Temporary Restraining Order previously entered by the Court in this matter restrain the Defendants from proceeding with foreclosure on the following described property:

> East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 of Part of the SW 1/4 of Sec. 6, T2SR10E, Dearborn Township WCM as recorded in L80 P2 Wayne County Records

be and the same hereby is dissolved, set aside and held for naught, and the Defendants are hereby permitted to proceed with their foreclosure action on the above described property.

/s/ Thomas J. Murphy
Circuit Judge

The Court of Appeals Opinion, filed July 22, 1971, as shown in Volume I, page 123a, Appendix on Appeal-Appellant, No. 57215, (which was the appeal handled by Attorney-Allen Counard for Cramer) shows, in part, as follows:

> "A circuit judge (not the judge who had heard the matter in 1968) entered an order denying Mrs. Cramer's request to file an amended complaint and denying her demand for jury trial; and subsequently he entered a summary judgment dismissing her complaint on the ground that the 1968 finding that she was in default made at the time the temporary restraining order was dissolved was res

judicata. Mrs. Cramer appealed. We reverse and remand for further proceedings.

"The summary 1968 hearing on the order to show cause was not a trial hearing. The transcript, 16 pages in length, is largely colloquy between lawyers and the judge. One witness for Metropolitan Federal was sworn and gave testimony. Mrs. Cramer's evidnece was not heard.

"The dissolution of the temporary restraining order in the present case did not end Mrs. Cramer's action which sought money damages as well as injunctive relief. She was entitled to a full trial hearing on her claims that Metropolitan Federal wrongfully foreclosed the mortgage and was guilty of other wrong doing and that, in consequence, money damages should be awarded to her.

* * *

"Reversed and remanded for further proceedings consistent with this opinion. Costs to plaintiff."

However, the attorneys for the Defendants-Metropolitan have consistently claimed that the "1968 finding that she was in default"—is res judicata." Further, attorney-Allen Counard, on a Motion to Strike Defendants (Metropolitan) affirmative defense of "adjudged in default" in her mortgage, obtained an Order striking the word "adjudged," as shown on page 172a, Volume I - Appendix on Appeal-Appellant, where said "Order Granting Plaintiffs Motion to Strike" is dated August 20, 1971. Attorney-Allen Counard continued managing said case with depositions and other motions, and during which time, the attorneys for Defendant-Metropolitan still claimed "res judicata" because of said

"Order" entered on September 27, 1968, as a "finding that the plaintiff was in default."

Further, in the meanwhile, all during the time that each of the attorneys, Abel Selburn and/or Allen Counard, are managing the case, no testimony is taken from Cramer, no testimony from Cramer allowed, and she was never heard and never allowed to be heard. It is obvious to Cramer, that all a person must do is to hire a lawyer to be denied due process of law and be denied the equal protection of the law. It appears that the only formula the courts have to offer is to "hire a lawyer" and be denied a day in court. That is specifically what has occurred in the prior action (Wayne 115-792) Docket No. 57215, decided October 6, 1977, and reported at 401 Mich 252.

Both Abel Selburn and Allen Counard mismanaged the case, and it appears that they did it intentionally.

Now, in the new action pending in the Michigan Supreme Court No. 62249, and where attorney-Allen Counard is in default for failure to plead or defend (as a Defendant) in (Wayne) No. 78-822-879 CZ, the Michigan Supreme Court has denied Cramer leave to appeal, to try to remove the false facts in said decision upon which said decision is based -- misrepresentations and false facts.

ARGUMENT

Petitioner-Cramer opposes Co-Defendant-attorney-Allen Counard's (by his attorney, Thomas M. O'Leary) motion for remand and motion to exercise discretion in abstention and dismissal, on the following grounds:

Co-Defendant Allen Counard is without

standing to motion the court for anything -- and, especially, without standing to motion the court to exercise discretion in abstention.

The alleged violations of the Constitution here, to wit: that Cramer has systematically and continuously been denied due process of law and denied the equal protection of the law, and where, in truth, Cramer's legal rights have been ruthlessly violated where the attorneys have covered-up for each other.

Furthermore, the court must assume jurisdiction before a matter can be dismissed. Further, a dismissal of the case would be on the merits, not for want of jurisdiction and by abstention. For cases discussing the distinction between questions going to the merits and those going to the jurisdiction, see:

Illinois Central R. Co. v Adams, 180 US 28;
Geneva Furniture Co v Karpen, 238 US 254;
Nashville, C. & St. L.R. Co. v Taylor, 86 F 168.

Further, it is the established practice of the United States Supreme Court to sustain the jurisdiction of the federal courts to issue injunctions to protect rights safeguarded by the Constitution, Philadelphia Co v Stimson, 223 US 605; Hays v Seattle, 251 US 233; Pennoyer v McConnaughy, 140 US 1; City Railway Co. v Citizens' Railroad Co., 166 US 557; City of Mitchell v Dakota Telephone Co., 246 US 396; and to restrain individual state officers from doing what the 14th Amendment forbids the State to do. Chicago, B. & Q. R. Co. v Chicago, 166 US 226; see also Ex parte Virginia, 100 US 339.

Further, jurisdiction is not defeated by the possibility that the averments might fail to state a cause of action on which Petitioner could actually recover. "For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction. Whether the complaint states a cause of action on which relief could be granted is a question of law and just as issues of fact it must be decided after and not before the court has assumed jurisdiction over the controversy. If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction." Bell v Hood, 327 US 678; Swafford v Templeton, 185 US 487; Binderup v Pathe Exchange, 263 US 291.

Co-Defendant-Attorney-Allen Counard's motion for remand and motion to exercise discretion in abstention and dismissal are absent of any contentions or facts and do not show that Petitioner-Cramer's cause is insubstantial or frivolous. Petitioner-Cramer's complaint, in fact, sets forth serious questions, both of law and fact, which the District Court can decide only after it has assumed jurisdiction. Bell v Hood, 327 US 678.

Also, see: Burger, A Sick Profession, 5 Tulsa L J 1 (1968). Judge Warren E. Burger, in describing the state of the legal profession, commented and posited the following proposition:

"(1) the legal profession as a whole has very poor standing;

(2) there are many causes for this, some of them incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and

(3) there is something we can and ought to do about this as the English bar and bench did a century ago."

For the reasons shown above, the Court should deny motion for remand and deny motion to exercise discretion in favor of abstention and dismissal of Petitioner-Cramer's Complaint.

Respectfully submitted,

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

Filed August 14, 1979 - No. 9-72789
U. S. District Court

MOTION FOR JUDGMENT ON THE PLEADINGS (by Selburn) OR IN THE ALTERNATIVE SUMMARY JUDGMENT

Now comes ABEL J. SELBURN, one of the Defendants in the foregoing matter, and files this motion under Title 28, USCA Rule 12 (c), or in the alternative, Rule 56, and states as follows:

1. Complaint herein fails to show Federal jurisdiction over the subject matter because there is no diversity of citizenship, nor is there a Federal

question involved. The only allegations as relate to Defendant SELBURN are found in Paragraph 1, 1.4, where no allegation of fact is made supporting Plaintiff's claims. In Paragraphs 8.7, 8.8, 8.12, 8.13, 814, 8.15, each and all of which states conclusions of law and sets forth no facts in support of said conclusions.

2. No Federal question is presented as relates to this Defendant, which alleges apparently attorney malpractice and is not based upon a Federal question or diversity of citizenship. All allegations against Defendant SELBURN do not contain sufficient allegations of Federal jurisdiction pursuant to 28 USCA Par. 1343, or under 42 USCA Par. 1983-1985-1986.

Further, Defendant moves the Court to dismiss the action because it appears on the fact of the Complaint and from the allegations therein that the claim set up in said Complaint did not accrue, if it accrued at all, the Plaintiff within three years before the bringing of this action, and therefore is barred by the Statute of Limitations.

WHEREFORE, Defendant ABEL J. SELBURN moves for judgment for no cause of action on the pleadings in this matter, and prays that this Honorable Court award ABEL J. SELBURN costs and fees in having to defend this matter.

ABEL J. SELBURN (P 20204)
Dated: Defendant in Pro per
Aug. 13, 1979

AFFIRMATIVE DEFENSES

The Defendant, ABEL J. SELBURN, will rely on the following affirmative defenses:

1. No Federal question.

2. No diversity of citizenship.

3. The Statute of Limitations.

4. Failure to state a claim upon which relief can be granted.

/s/ ABEL J. SELBURN (P 20204)
Defendant in pro per

ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT

Now comes ABEL J. SELBURN, one of the Co-Defendants in the above cause, in his own proper person, and for his Answer to Petitioner-Defendant's (sic) Complaint for Declaratory Judgment, says:

1. Jurisdiction and Venue.

1. Answering Paragraph 1.1, Defendant SELBURN admits the paragraph with the exception of the statements relating to "competent counsel", and to the extent that this is reflection on the capacity or ability of SELBURN. Said statement is denied for the reason it is not true.

2. Answering Paragraphs 1.2 and 1.3, SELBURN neither admits nor denies same, not having sufficient information upon which to form a belief; and further, said paragraphs do not refer to SELBURN.

3. Answering Paragraph 1.4, SELBURN neither admits nor denies the allegations as they relate to Defendants COUNARD and McFADDEN, not having sufficient information upon which to form a belief; but as to the allegations addressed to Defendant

SELBURN, SELBURN admits the location of his office and that he was retained in 1968 by Plaintiff, specifically as to said foreclosure matter, and that he withdrew in February, 1970 as counsel to Plaintiff in said foreclosure matter.

4. Answering Paragraphs 1.5 and 1.6, Defendant SELBURN states the allegations in no way relate to him.

5. Answering Paragraph 1.7 and the sub-paragraphs contained thereunder, Defendant SELBURN neither admits nor denies that Federal jurisdiction exists for Plaintiff under the various Federal and Michigan constitution and Federal citations referred to as relates to other Defendants, but denies that said quoted law creates any Federal jurisdiction as relates to Defendant SELBURN, for the reason that no showing has been made of any connection between Plaintiff and Defendant SELBURN as relates to any of said cited law.

6. Answering Paragraph 1.8, Defendant SELBURN denies that this has any relevancy to him, and affirmatively states that he is neither a State nor an officer or agency thereof.

7. Answering Paragraph 1.9, Defendant SELBURN denies that this Court has any jurisdiction, since no Federal questions are raised in relation to him.

8. Answering Paragraph 1.10, Defendant SELBURN denies that this paragraph relates to him.

2. Cause of Action and Federal Intervention

9. Answering Paragraph 2.1 through 2.7, Defendant SELBURN denies that the allegations have any relevancy or relation to him.

3. Wrongful Foreclosure, Slander of Title

10. Answering Paragraphs 3.1 through 3.11, Defendant SELBURN denies that the allegations have any relevancy to him.

4. Actual Controversy - State Action Involved

11. Answering Paragraphs 4.1 through 4.8, Defendant SELBURN denies that the allegations have any relevancy to him.

5. Willful and Malicious Tort

12. Answering Paragraphs 5.1 through 5.4, Defendant SELBURN denies that the allegations have any relevancy to him.

6. Fraud, Concealment and Deception - Attorney Malpractice

13. Answering Paragraph 6.1, Defendant SELBURN re-alleges his answers hereinbefore contained in Paragraphs 1.1 through 5.4, as though each paragraph were restated herein.

14. Answering Paragraph 6.2, Defendant SELBURN denies the allegations contained therein, except he admits that he was engaged by Plaintiff in 1968.

15. Answering Paragraph 6.3, Defendant SELBURN admits that Plaintiff retained his services; as to the balance of the allega-

tions contained therein, he denies said allegations and affirmatively states that the Statute of Limitations has run as to any claim of malpractice by the Plaintiff against Defendant.

16. Answering Paragraph 6.4, Defendant SELBURN denies the allegations contained therein.

17. Answering Paragraph 6.5, Defendant SELBURN denies the allegations contained therein for the reason that the same are untrue.

18. Answering Paragraph 6.6, Defendant SELBURN denies the allegations contained therein.

19. Answering Paragraphs 6.7 through 6.27, Defendant SELBURN denies the allegations have any relevancy or relations to him.

20. Answering Paragraph 6.28, Defendant SELBURN denies that any cause of action against him accrues from the decision contained in 401 Mich 252.

7. Fraud, Concealment or Deception - Attorney Malpractice

21. Answering Paragraphs 7.1 through 7.36, Defendant SELBURN denies any relevancy to him.

8. Conspirators - Obstructionists of Justice

22. Answering Paragraph 8.1, Defendant SELBURN states that the act cited speaks for itself and has no relevancy to him.

23. Answering Paragraph 8.2, Defendant SELBURN admits that Plaintiff engaged his services on or about August, 1968, and

neither admits nor denies the remaining allegations.

24. Answering Paragraph 8.3, Defendant SELBURN denies that the allegations have any relation or relevancy to him.

25. Answering Paragraph 8.4, Defendant SELBURN incorporates each and every one of his answers to Paragraphs 1 through 7 above and the sub-paragraphs hereunder, as though each paragraph and sub-paragraph were each fully restated.

26. Answering Paragraph 8.5 and 8.6, Defendant SELBURN denies that the allegations have any relation to him.

27. Answering Paragraph 8.7, Defendant SELBURN denies that allegations contained therein for the reason that the same are untrue. As to Defendants COUNARD and McFADDEN, neither admits nor denies the allegations, and further affirmatively states that said paragraph pleads a conclusion without a single supporting allegation of fact, and therefore, Defendant SELBURN moves to strike said paragraph as it relates to him.

28. Answering Paragraph 8.8, Defendant SELBURN neither admists nor denies the allegations as relates to COUNARD or McFADDEN. He denies that he was a conspirator, that he impeded, hindered, and/or obstructed Plaintiff's rights to the equal protection of the laws, and further denies that he acted in his own interest; he further affirmatively states that he was discharged by the Plaintiff in February, 1970, and had no further interest or knowledge of the proceedings thereafter.

He further affirmatively states the Plaintiff pleads a conclusion without a single supporting allegation of fact, and therefore moves to strike said paragraph as it relates to him.

29. Defendant SELBURN denies that Paragraph 8.9 has any relevancy or relation to him.

30. Answering Paragraph 8.10, Defendant SELBURN denies the allegations contained therein.

31. Answering Paragraph 8.11, Defendant SELBURN denies that the allegations have any relevancy or relation to him.

32. Answering Paragraph 8.12, Defendant SELBURN denies the allegations as contained to him, and neither admits nore denies the allegations as relate to Defendants COUNARD or McFADDEN, and further and affirmatively states that the plaintiff pleads a conclusion without a single supporting allegation of fact, and therefore Defendant SELBURN moves to strike said paragraph as it relates to him.

33. Answering Paragraphs 8.13, 8.14 and 8.15, Defendant SELBURN neither admits nor denies the allegations as relates to COUNARD and McFADDEN, but as relates to himself, he denies the same for the reason that the allegations are not true; and further affirmatively states the Plaintiff pleads a conclusion without a single supporting - allegation of fact, and therefore, Defendant SELBURN moves to strike said paragraphs as relate to him.

9. Actual Controversy - Federal Action Involved

34. Answering Paragraphs 9.1 through 9.25, Defendant SELBURN states that these paragraphs do not relate to him.

10. Injunctive Relief Against Michigan Supreme Court Justices

35. Answering Paragraphs 10.1 through 10.23, Defendant SELBURN states that these paragraphs do not relate to him.

11. Measure of Damages

36. Answering Paragraph 11.1, Defendant SELBURN denies this paragraph has any relavancy to him, and further and affirmatively states that this paragraph appears to be seeking damages against him. Defendant SELBURN denies that Plaintiff is entitled to relief; and further and affirmatively states that no one single allegation of fact has been pled in support of said claims for damages.

37. Answering Paragraph 11.2, Defendant SELBURN denies that Plaintiff is entitled to a trial by jury in this cause, inasmuch as this matter as it relates to Defendant SELBURN may be disposed of by motion, which motion is herewith being filed.

38. Answering Plaintiff's prayer for relief - Paragraphs 12.1 through 12.7, Defendant SELBURN denies that the Plaintiff is entitled to any of the relief prayed for.

ABEL J. SELBURN (P 20204)
In Pro Per

Filed August 14, 1979 - No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF MOTION FOR JUDGMENT ON PLEADINGS

This is a lawsuit filed by Plaintiff in proper person against numerous Defendants, including Defendant SELBURN. Breaking the pleadings down, it would appear that Plaintiff's claim against Defendant SELBURN sounds in attorney malpractice for services rendered in August of 1968 through the time when his relationship ceased with the Plaintiff in February of 1970. The lawsuit that he was engaged to represent Plaintiff was a civil action in the Wayne County Circuit Court concerning foreclosure of a mortgage. The balance of the instant suit are allegations against various other attorneys, METROPOLITAN SAVINGS & LOAN ASSOCIATION, its officers and directors, and the Michigan Supreme Court.

Plaintiff pleads that Defendant SELBURN was a private attorney allegedly engaged by Plaintiff to perform legal services for her in a Michigan state court, and at no time pursuant to any state action whatsoever. There is no allegation of diversity of citizenship.

Issue

1. Is there diversity of citizenship?

2. Is there a Federal question presented?

3. Is there a claim upon which relief can be granted?

4. Has the Statute of Limitations run as to the claim against Defendant SELBURN?

Argument

Plaintiff is no stranger to the courts, and brings this action in pro per. She does not allege diversity of citizenship. On the contrary, she alleges she is a citizen of Wayne County, Michigan, and that Defendant SELBURN is an attorney with offices in Oakland County. Plaintiff does not rely upon diversity of citizenship to maintain her action in the Federal courts. 28 USC 1332.

Neither does Plaintiff present a Federal question in order to predicate Federal jurisdiction herein. Jurisdiction cannot be based on the ground of a Federal question through a mere general statement or conclu- - sion that a Federal question or the construction of a Federal statute is involved, where no supporting facts are alleged. Also, it cannot be based on a mere assertion that - State law or action is lacking in due process. See Douglas vs. City of Jeannette, 130 F2d 652, Affirmed 319 US 157.

Likewise, Defendant SELBURN moves to dismiss for failure to state a claim upon which relief can be granted under Rule 12, Federal Rules of Civil Procedure, or in the alternative, as a motion for summary judgment under Rule 56. As to Defendant SELBURN, Plaintiff's allegations are in the form of conclusions rather than facts. (Paragraphs 1, 1.4, 8.7, 8.8, 8.12, 8.13, 8.14 and 8.15) A claim and right to relief thereon can be shown only by alleging sufficient facts, and not by merely alleging conclusions of law. A claim cannot be stated in the form of any legal conclusion without more, and mere conclusions of law cannot sufficiently advise the adverse party so he can prepare his defense or inform the

Courtso it can determine the question sought to be presented. See Sheridan-Wyoming Coal Co., Inc. vs. Krug, 168 F2d 557. Characterization of acts by legal attributes or consequences is a conclusion. Assertion of a failure to render service is a conclusion, and cannot sufficie to show such matter. Ulrich vs. Freedman, 196 F 113.

Likewise, Plaintiff's suit against Defendant SELBURN alleges legal malpractice for services rendered in 1968 to early 1970. Plaintiff dismissed Defendant SELBURN in February of 1970. The two year Statute of Limitations under this section to bring an action against an attorney for malpractice runs from the date client discharges said attorney. An attorney malpractice action commenced more than two years after client's discharge of attorney is time barred. Basic Food Industries, Inc vs Travis et al, 60 Mich App 492.

Plaintiff has commenced numerous actions and prosecuted appeals to and including the United States Supreme Court. She is well conversant with law in any and all phases, especially as that law which deals with attorneys, their actions, and her rights as a lay person. She has previously brought actions against attorneys for malpractice. See Wayne County Circuit No. 78-822-879-DZ, wherein Defendant SELBURN was not brought as a Defendant and if he had, a Statute of Limitations still would have been a bar to the action.

In view of the above, this matter must be dismissed as to Defendant SELBURN.

Respectfully submitted,
/s/ ABEL J. SELBURN (P20204)
Defendant in pro per

Dated:
Aug 14, 1979

August 17, 1979 - No. 9-72789
U. S. District Court

DEFENDANT ABEL J. SELBURN'S MOTION FOR JUDGMENT ON THE PLEADINGS OR SUMMARY JUDGMENT

ORDER

The motion filed in the above-entitled cause will be denied unless the movant files, within five (5) days of the date of this order, a proof of service as required by Local Court Rule (X(i).

/s/ ROBERT E. DeMASCIO
United States District Judge

Dated:
August 17, 1979

Filed September 26, 1979 No. 9-72789
U. S. District Court

MOTION TO STRIKE CO-DEFENDANT-SELBURN'S AFFIRMATIVE DEFENSES

Now comes Petitioner-Cramer, in pro per, Defendant-mortgagor in wrongful foreclosure action, and respectfully moves the Honorable-court to enter an Order striking the affirmative defenses of Co-Defendant Abel J. Selburn, pursuant to Rule 11 and Rule 12 (f), for the following reasons:

1. The affirmative defense of "no Federal question" is a sham and false, and is impertinent and insufficient defense,

intended as a mockery of the court, as more fully shown in Petitioner's opposing pleadings, incorporated by reference herein.

2. The affirmative defense of "no diversity of citizenship" is an insufficient defense and impertinent, as a mockery upon the court, as more fully shown in Petitioner's opposing pleadings, incorporated by reference herein.

3. The affirmative defense of "the statute of limitations" is a sham, impertinent and immaterial and insufficient defense, as more fully shown in Petitioner's opposing pleadings, incorporated by reference herein.

4. The affirmative defense of "failure to state a claim upon which relief can be granted" is a question of law, and as purported by Co-Defendant-Attorney-Selburn, an insufficient defense, impertinent and immaterial as related to said co-defendant Abel J. Selburn, as more fully shown in Petitioner's opposing pleadings, incorporated by reference herein.

This motion is based upon the records and files herein and pursuant to Rule 11 and 12 (f).

WHEREFORE, Petitioner-Cramer prays that this Honorable court will Order stricken from the records the affirmative defenses of co-defendant Abel J. Selburn, and that the court will exercise its discretion as to appropriate disciplinary action against the said co-defendant Abel J. Selburn, pursuant to Local Court Rule IV (a), (b) (4) and (d).

Dated:
Sept 20, 1979

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful foreclosure

Filed September 26, 1979 No. 9-72789
U. S. District Court

AFFIDAVIT IN SUPPORT OF MOTION TO STRIKE and IN OPPOSITION TO (SELBURN'S) AFFIRMATIVE DEFENSES

Petitioner-Cramer opposes Defendant-Selburn's affirmative defenses as follows:

1. Federal questions are presented involving conspiracy, obstructing justice, obstructing due court of justice, violation of civil rights, impeding and hindering due process of law and denial of equal protection of law, fraud, concealment and deceit, legal malpractice, and other matters under Acts of Congress and including, but not limited to, violations under the Fourteenth Amendment to the United States Constitution, deprivation of property and injury to person and property, among other Federal questions enumerated in Petitianer's pleadings herein.

2. Diversity is not required to be shown in all cases before the Federal jurisdiction; however, there are about 35 lawyers, or more, in the Federal Home Loan Bank Board, in Washington, D.C. - "No diversity" is an insufficient and sham defense for attorney-Abel Selburn.

3. The Statute of limitations is not applicable where fraud is shown or alleged; the Statute of Limitations has not yet begun to run.

4. Relief sought -- award of money damages by judgment for execution, among other relief including, but not limited to, reformation of State court decision and Writ of error coram non judice.

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful
foreclosure

Dated:
Sept 20, 1979

Filed September 26, 1979 No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF MOTION TO STRIKE
CO-DEFENDANT-SELBURN'S AFFIRMATIVE DEFENSES

Petitioner incorporates by reference herein the following pleadings and matters with regard to Petitioner's MOTION TO STRIKE CO-DEFENDANT-SELBURN'S AFFIRMATIVE DEFENSES, as follows:

Affidavit and Opposition to (Selburn's) Motion for Judgment on the Pleadings or in the Alternative Oppostion to Summary Judgment.

Exceptions In Reply to Co-Defendant-Selburn's Answer

Opposition to (Selburn's) Affirmative Defenses and Affidavit

Brief in Support of Opposition to (Selburn's) Motion for Judgment on the Pleadings, and Affidavit

COURT RULES

Petitioner relies on the following Court Rules:

Rule 11. " * * * The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. * * * If a pleading is not signed or is signed with intent to defeat the purpose of this rule, it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a willful violation of this

> rule an attorney may be subjected to appropriate disciplinary action. * * * "

Rule 12. Defenses and Objections. * * *

> (f) * * * upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent * * * matter. (emphasis added)

Local Rule IV. Discipline of Attorneys.

(a) The Chief Judge shall have charge of all matters relating to the discipline of members of the Bar.

(b) The Court may make an order in a disciplinary proceeding disbarring, suspending or censuring, or taking such other action as justice may require, with respect to a member of the Bar of this Court, or an attorney admitted under Rule V (d) hereof. * * *

> (4) who is guilty of conduct unbecoming a member of the Bar of this Court. Such conduct shall be deemed to consist of fraud, deceit, malpractice, or violation of the Canons of Ethics of the American Bar Association or of the Michigan State Bar Association.

(d) Cases within subdivision (4) of paragraph (b) shall be presented to the Chief Judge, and if he deems the charges of professional misconduct of sufficient weight, he shall refer them for preliminary investigation and recommendation to the Michigan State Bar Association and, in his discretion,

to the United States Attorney. The recommendation shall be presented to the Chief Judge."

In view of the matters shown in Petitioner-Cramer's pleadings in response to Co-Defendant-Abel Selburn's pleadings and incorporated by reference herein, the matter should be given serious consideration by this Honorable Court, with reference to the duties of the Chief Judge, as to all matters relating to the discipline of members of the Bar.

Respectfully submitted,

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful
foreclosure

Dated:
Sept 20, 1979

Filed Sept 26, 1979 - No. 9-72789
U. S. District Court

OPPOSITION TO (SELBURN'S MOTION FOR JUDGMENT ON THE PLEADINGS OR IN THE ALTERNATIVE OPPOSITION TO SUMMARY JUDGMENT

Now comes Virginia Cramer, Petitioner, in pro per, and in opposition to Defendant-Abel Selburn's motion for judgment on the pleadings or in the alternative summary judgment, pursuant to Rule 12 (c) or Rule 56, Petitioner incorporates by reference herein her EXCEPTIONS IN REPLY TO CO-DEFENDANT-SELBURN'S ANSWER and Petitioner says as follows:

1. Answering paragraph 1, Petitioner denies the same and incorporates her

EXCEPTIONS IN REPLY TO CO-DEFENDANT-SELBURN'S ANSWER by reference herein, attached hereto, and where facts are shown to support Petitioner's claims as to Petitioner's Complaint and paragraphs 1.1, 1.4, 1.7, 1.8, 1.9, 1.10, 6.2, 6.3, 6.4, 6.5, 6.6 6.28, 8.1, 8.2, 8.7, 8.8, 8.10, 8.12, 8.13, 8.14, and 8.15—and as pertaining, specifically, to Defendant-attorney, Selburn, pursuant to the Fourteenth Amendment of the United States Constituion, 42 USCA 1983, 1985 et seq. among acts of Congress enumerated in Petitioner's Complaint involving Federal questions, and that there is a genuine issue involved precluding entry of summary judgment, as set forth in the facts shown.

2. Answering paragraph 2, Petitioner denies the same and affirmative—states that said attorney-malpractice is co-related with conspiratorial design to obstruct the due course of justice in the matters alleges in Petitioner's Complaint and Reply to Co-Defendant-Selburn's answer, incorporated by reference herein, involving federal questions under the provisions of the Fourteenth Amendment to the United States Constitution and enumerated in Petitioner's Complaint, incoporated by reference herein.

Further answering paragraph 2, Petitioner denies the same and affirmatively states that:

(a) Statute of Limitations is not applicable where fraud is shown,

(b) That the Statute of Limitations has not yet begun to run, and Petitioner's claim accrues where the Michigan Supreme Court relys on "Virginia Cramer brought an action to enjoin foreclosure of a mortgage and for damages against

Metropolitan Savings and Loan Association and its officers, alleging excessive escrow demands and mishandling of the escrow funds as a defense to the foreclosure. The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default. (emphasis added)

(c) That said "judgment for the defendants on a finding that the plaintiff was in default" is dated September 27, 1968, during which time, from August, 1968 through February 1970, attorney-Selburn was retained by Cramer to manage said case (Wayne) 115-792.

(d) That said "judgment" entered on September 27, 1968, is fraudulent, and was concealed from Cramer by the fraud and deceit of attorney-Abel Selburn, together with other attorneys named as co-defendants herein.

"Diversity" is not necessarily required in all cases to show Federal jurisdiction over the subject matter. Further, Petitioner-Defendant in wrongful foreclosure is not barred by the Statute of Limitations; and where fraud is shown there is no statute of limitations. Petitioner's cause of action is based upon fraud, concealment and deceit, in conspiratorial design, together with many and other various federal questions where by the corrupt-practices of lawyers in the State courts, she has been denied due process of law, denied the equal protection, denies the right and/or opportunity to be heard, - and she has been victimized by said corruption in the State courts.

WHEREFORE Petitioner-Cramer prays that the Honorable court deny dismissal of the action, deny summary judgment and deny costs and fees.

Respectfully subm itted

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful fore-
closure

Dated:
Sept 20,1979

(with Affidavit filed)

Filed Sept 26, 1979 No. 9-72789
U. S. District Court

EXCEPTIONS IN REPLY TO CO-DEFENDANT-SELBURN'S ANSWER

Now comes Petitioner-Cramer, in pro per, and in reply to Co-Defendant Abel Selburn's Answer to Complaint, Petitioner states her exceptions and disagreeme nts, as follows:

Paragraph 1.1, Defendant-Abel Selburn takes exception to Petitioner's statement relating to "competent counsel" as a reflection on the capacity or abiaity of Selburn and denies the same.

Petitioner's reply: It was necessary for Cramer to file a grievance with the State Bar of Michigan against attorney-Selburn, for his gross negligence and deceit where he had furnished copies of pleadings to Cramer with a cover-letter stating that said pleadings had been filed in the Wayne Circuit Court in CA No. 115-792. However, there were no such pleadings filed and the defendants-Metropolitan were not served and the attorneys for Metropolitan never were furnished copies. Attorney-Abel Selburn claimed that the Wayne Circuit

Court record room lost the pleadings.- Said grievance was handled by the Bar-grievance Board in about March or April, 1970. Cramer had hired attorney Abel Selburn in August 1968. Cramer lost her appeal rights and delayed appeal rights, and however, Cramer had no knowledge of the September 27, 1968, "Order Dis olving Temporary Restraining Order" entered as a "default" in the mortgage. Attorney-Abel Selburn deliberately concealed that information from Cramer.

That same "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, while attorney-Abel Selburn - was managing the case, is why Attorney-Thorpe (for Metropolitan) continuously claims "res judicata" and that the "Court found her in default of her mortgage."

That also is the same Order referred to in the Michigan Supreme Court decision - of October 6, 1977, as: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default."

It is the same document, and dated September 27, 1968. It is not a judgment. There were no findings of fact; no exhibits were entered into the record at the one and only hearing on September 6, 1968, at which attorney-Abel Selburn appeared on behalf of Cramer, and which said hearing resulted in said Order dated September 27, 1968.

No "default" in the said mortgage was shown; no records of the mortgage account were presented, and there was only one hearing, to wit: on September 6, 1968, and no evidence and no exhibits are shown in the transcript.

Nothing was produced by the mortgagee and their attorneys.

Paragraph 1.4, Defendant-Abel Selburn admits that he was Cramer's counsel in said foreclosure matter and that he was retained "in 1968) and that he "withdrew" in February, 1970.

Petitioner's reply: The transcript of the one and only hearing on September 6,-1968, as above-stated, shows that attorney-Selburn attended that hearing, and Cramer was also present at that one and only hearing, before Wayne Circuit Court Judge Thomas J. Murphy.

Paragraph 1.7, Jurisdiction claimed under - 42 USCA 1985 et seq. and Defendant-attorney-Selburn denies that said quoted law creates any Federal jurisdiction as relates to Defendant Selburn.

Petitioner's reply: Defendant-attorney- - Selburn is named as one of the co-conspirators, as an obstructionist of justice. (See on page 25 of Petitioner's Complaint.)

Paragraph 1.8, Attorney-defendant-Selburn denies that he is an officer.

Petitioner's reply: All attorneys are officers of the court. The Court is a State operation.

Paragraph 1.9, Attorney-defendant-Selburn denies that this Court has any jurisdiction, "since no Federal questions are raised in relation to him."

Petitioner's reply: Defendant-attorney- - Selburn is named as one of the co-conspirators and obstructionist of justice, under the provisions of 42 USCA 1985 et seq.

Paragraph 1.10, Attorney-defendant-Selburn denies "irreparable injury" to Cramer, and he denies "bad faith enforcement" of MCLA 600.3201 et seq.; MSA 27A.3201 et seq.

Petitioner's reply: Defendant-attorney-Selburn was present, on behalf of Cramer, at the one and only hearing on September 6, 1968, where Judge Murphy said "go ahead with the foreclosure," and which resulted in said "Order" dated September 27, 1968, as aforementioned. -- and attorney-Selburn failed and neglected to file any pleadings in the Court.

Paragraph 6.2, Attorney-defendant-Selburn admits that his services were retained by Cramer in 1968, and he denies knowing of "the damage and harm occurring against Plaintiff, and said injury to her person and property would continue to occur, when Plaintiff engaged the legal service of said-attorney-Abel Selburn and which he did nothing to prevent the occurrence of damage and harm to Plaintiff." (FRAUD, CONCEALMENT AND DECEPTION - Attorney Malpractice)

Petitioner's reply: Attorney-defendant-Selburn filed absolutely no pleadings in said case (Wayne CA No. 115-792), but he deceived Cramer by claiming that he had filed pleadings. A foreclosure causes a great deal of harm and injury and damage, and attorney-Selburn did nothing on behalf of Cramer.

Paragraph 6.3 (FRAUD, CONCEALMENT AND DECEPTION -- Attorney Malpractice) Attorney-defendant-Selburn admits that Cramer retained his services (in 1968) "and affirmatively states that the Statute of Limitations has run as to any claim of malpractice"

Petitioner's reply: There is no statute of limitations where fraud is shown.

Paragraph 6.4, (FRAUD, CONCEALMENT AND DECEPTION - Attorney Malpractice) Attorney-defendant-Selburn denies that he "abandoned the case in fraud of his client, Virginia Cramer, and failed and neglected to prevent damage and harm to said client".

Petitioner's reply: Where attorney-Selburn admits he was reained in 1968, and then says he "withdrew" in "February 1970" and he deceived his client-Cramer regarding the filing of pleadings, and in fact, filed no pleadings, that is abandoning the case in fraud of his client.

Paragraph 6.5, (FRAUD, CONCEALMENT AND DECEPTION - Attorney Malpractice) Attorney-defendant-Selburn denies that "by fraud and deceit, attorney-Abel Selburn led Cramer to believe that he was acting on behalf and in her best interests, when, in fact, attorney-Abel Selburn neglected and deliberately failed to act in the interest of client-Cramer."

Petitioner's reply: Attorney-Selburn admits he was retained by Cramer "in 1968" - the transcript shows he appeared in Court on September 6, 1968; the "Order Dissolving Temporary Restraining Order" as a "finding of default of Cramer's mortgage" has constantly been claimed to be "res judicata" by the attorneys for Metropolitan, and attorney Abel Selburn did nothing; no pleadings filed; he did nothing, and concealed matters and deceived Cramer all during the approximate 18 months.

Paragraph 6.6, (FRAUD, CONCEALMENT AND DECEPTION - Attorney Malpractice) Attorney-defendant-Selburn denies that "after almost eighteen (18) months had elapsed after Cramer

had hired said attorney-Abel Selburn, she discovered that said attorney-Abel Selburn had filed no pleadings in the Court in the prior action involving said mortgage foreclosure on Cramer's property."

Petitioner's reply: Actually and factually, there are no pleadings filed in the prior action (Wayne) No. 115-792 by Attorney-Selburn. Cramer prepared and filed the Complaint, Order to Show Cause with Temporary Restraining Order, in pro per, on August 12, 1968. Cramer filed an Amended Complaint on August 23, 1968, in pro per. Cramer hired Selburn on/or about August 26, 1968. He appeared at the one and only hearing on September 6, 1968, as shown in the transcript. Cramer filed additional pleadings in March 1970. No pleadings were filed by Selburn.

Paragraph 6.28, (FRAUD, CONCEALMENT AND DECEPTION-- Attorney Malpractice) Attorney-defendant-Selburn denies that any cause of action against him accures from the decision contained in 401 Mich 252.

Petitioner's reply: In said decision reported at 401 Mich 252 - it shows: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." - and which is dated September 27, 1968, and Attorney-Abel Selburn did nothing about said "Judgment."

(Obviously, attorney-Allen Counard covered-up for Attorney-Abel Selburn and neither of them took the matter on appeal, as to said Order dated September 27, 1968.)

Paragraph 8.1 - CONSPIRATORS - OBSTRUCTIONISTS OF JUSTICE - Attorney-defendant-Selburn

states that 42 USCA 1985 et seq. has no relevancy to him.

Petitioner's reply: The act of Congress speaks for itself. Attorney-defendant-Selburn engaged in a conspiracy to interfere with Cramer's civil rights, obstructed, defeated, in a manner, the due course of justice, with intent to deny the equal protection of the laws, or to injure Client-Cramer and her property ---- when he did nothing as her attorney on the said foreclosure matter, and he deceived her and concealed matters regarding said Civil Action (Wayne) 115-792, for which he was hired to represent Cramer, when the Court would not allow Cramer to represent herself.

Paragraph 8.2 CONSPIRATORS - OBSTRUCTIONISTS OF JUSTICE - Attorney-Defendant-Selburn admits that Cramer engaged his services on or about August, 1968.

Paragraph 8.7 CONSPIRATORS - OBSTRUCTIONISTS OF JUSTICE - Attorney-defendant-Selburn denies that he became a deterrent with intent to defeat the due course of justice by managing the case so that Cramer would never have a day in court on said foreclosure.

Petitioner's reply: Attorney-Selburn filed no pleadings and deceived client-Cramer by claiming that he filed pleadings; attorney-Selburn concealed the matter of the September 27, 1968 Order entered by Judge Murphy. Attorney-Selburn did nothing to allow client-Cramer to have a day in court to be heard, defeating the due course of justice, by doing nothing on said case for approximately 18 months.

Attorney-defendant-Selburn ' moves to strike said paragraph as it relates to him." Attorney-defendant-Selburn states no grounds. The allegation of fact can be easily proven — by examining the court record (Wayne No. 115-792).

Paragraph 8.8 - CONSPIRATORS - OBSTRUCTIONISTS OF JUSTICE Attorney-defendant-Selburn denies "that he was a conspirator, that he impeded, hindered, and/or obstructed Cramer's rights to the equal protection of the laws, and further denies that he acted in his own interests, and he states that he was discharged by Cramer in February 1970.

> Petitioner's reply: In paragraph 1.4 (above) attorney-Selburn states that he — "withdrew." Now, in paragraph 8.8 attorney Selburn states that he was "discharged" in February 1970. In fact, he was "fired" for lying to Cramer and mishandling the case. In his own interest, he had received $6,000.00 (that's six thousand dollars) — from Cramer during the period of from August 1968 through February, 1970, and while he claimed to be filing pleadings, he filed no pleadings in the said case.

(Attorney-Eugene LaBelle helped Cramer to get her money back, which Attorney-Selburn's checks bounced.)

Attorney-defendant-Selburn "moves to strike said paragraph as it relates to him" and he affirmatively states that Cramer pleads a "conclusion without a single supporting allegation of fact".

> Petitioner's reply: Now the facts are shown. The omissions in the Wayne Circuit Court CA No. 115-792 are the facts.

Paragraph 8.10 - CONSPIRATORS - OBSTRUCTIONISTS OF JUSTICE Attorney-defendant-Selburn denies that he sent copies of pleading to Cramer and then, Cramer learned in February 1970 that attorney Abel Selburn has never filed any pleadings in the court in this matter, and thus, he abandoned the case in fraud of his client.

Petitioner's reply: Due process of law and the equal protection of the law, most always requires "paper work" which attorney Selburn failed and neglected to prepare and file in the court record.

Attorney-defendant-Selburn also states that Cramer pleads "a conclusion without a single supporting allegation of fact," and attorney-defendant-Selburn "moves to strike said paragraph as it related to him."

Petitioner's reply: The omission of pleadings in the court records is a fact. (Gravity and a lot of other things that are not visible are facts.) The Court may take judicial notice of omissions of pleadings. (and perhaps "Man's ability to reason")

Paragraphs 8.13, 8.14 and 8.15 - CONSPIRATORS - OBSTRUCTIONIST OF JUSTICE - Attorney-defendant-Selburn denies that he participated or unlawfully engaged in a conspiracy and unlawful combination for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in the State of Michigan, or wrongfully performed acts or wrongfully omitted the performance of acts or made statements in furtherance of participating as conspirators, in an unconstitutional manner, as obstructionists of justice, in "pari delicto" with client-

Cramer's adversaries, the attorneys for the opposition, and so acting against client-Cramer and for his own interest; and that - the overall purpose of the unlawful combination, as conspirators and obstructionists of justice, by said attorneys and lawyers, is to deceive the client while the attorney is acting on his own behalf and in his own interest, contrary to the interests of the client while at the same time taking money for legal services with the intent and purpose of self-interest against the client's interest" and he moves to strike said paragraphs as relating to him.

Petitioner's reply: Pleas refer to Petitioner's replies for paragraphs 1.1, 1.4, 1.7, 1.8, 1.9, 1.10, 6.2 6.3, 6.4, 6.5, 6.6, 6.28, 8.1, 8.2, 8.7, 8.8, 8.10, 8.12, and where the facts are shown, as above, and incorporated by reference herein.

WHEREFORE your Petitioner prays that she-may have a jury trial and that she be awarded damages and such other and further relief as is agreeable with equity and good conscience, and as prayed for in her complaint.

/s/ Virginia Cramer,
Petitioner in pro per -
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

(Affidavit attached)

Filed September 26, 1979 - No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF OPPOSITION TO (SELBURN'S) MOTION FOR JUDGMENT ON THE PLEADINGS

FACTS

It is amazing how Attorney-Defendant-Abel Selburn and Attorney-Defendant-William R. McFadden, togeher, have risen to the level of their own incompetence, and where their individual pleadings are almost identical. Said Defendants-Attorneys have the facts wrong, designed to mislead the court, and their pleadings consist of smelly garbage. (Pro se pleadings should be construed liberally by the court.)

Petitioner-Cramer, in propria persona, is a stranger to the Courts inasmuch as she is honest, upright, decent, straight-forward, good moral character and she detests dishonesty by the lawyers. That's why she is a "stranger" to the Courts, for the reasons that with her qualities of character, she is the "lone-stranger" in a packed, crawded courtroom.

Petitioner-Cramer hired attorney-Abel Selburn (in the prior action No. 115-792) in August, 1968, because she was forced to hire a lawyer when Judge Thomas J. Murphy (Wayne Circuit Court) now decease, helled at her and would not allow her to handle her own case, and stopped her from questioning John C. Denyer (of Metropolitan) on the witness-stand on August 16, 1968, on an "Order to Show Cause and peculiarly, that transcript is not available.

Attorney-Defendant-Abel Selburn filed no pleadings in the said prior action 115-792. As a matter of fact, while Cramer was led to

believe that Attorney-Abel Selburn was managing said case during the period of August 1968 through February 1970, he had already sold Client-Cramer out, by allowing the entry of a fraudulent Order, dated September 27, 1968, where it imports that Cramer was "in default" of her mortgage, and which is false. The Michigan Supreme Court decision of October 6, 1977, shows the said "Order Dissolving Temporary Restraining Order" as follows:

> "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." which is a fraudulent statement.

As a matter of fact, there are so very many false statements in that Michigan Supreme Court decision, that it is shameful that the members of the highest court in the State put their signatures to it. My God, the people in the Michigan Supreme Court know your Petitioner was never heard and never allowed to be heard.

Now attorney-Selburn is garbaging up this case with his divertive issue of "diversity of citizenship" among other garbage. Mr. Abel Selburn is obviously a very insecure person when he resorts to all such garbage, diversions, innuendos and false statements, such as: "Plaintiff has commenced numerous actions and prosecuted appeals to and a including the United States Supreme Court. She is well conversant with law in any and all phases, especially as that law which deals with attorneys, their action, and her rights as a lay person. She has previously brought actions against attorneys for malpractice." --- which is a bunch of garbage and a lot of baloney, together with being mostly false.

Petitioner-Cramer moves that the Court strike the entire "brief in support of motion

for judgment on pleadings" as submitted by attorney-defendant-Abel Selburn, on the grounds of being sham, false, insufficient -- defense, redundant, immaterial, and impertinent, and of no value to the instant action unless the Court, in its discretion, would refer the matter to be investigated by the Grievance Commision of the State Bar of Michigan, for the purpose of suspending and/or disbarring Abel Selburn.

(incidentally, that defense of "no diversity" is a bad joke; and it infers, actually, that all attorneys are the same as Abel Selburn.)

ARGUMENT

Summary judgment is not proper where there are issues of material fact. Rule 56. (FRCP)

Petitioner-Cramer's allegations of fraud, concealment and deceit, together with matters of attorney malpractice are pleaded with particularity, as required. Rich v Touche Ross and Company (DC NY) 68 FRD 243.

"A declaration which alleges the illegal purpose intended by the conspiracy and the fact that the purpose has been carried out to the plaintiff's damage is sufficient, even though not specifically showing the means used." Scofield v Clarke, 1914, 146 NW 377, 179 Mich 681.

In a most significant aspect of a decision involving malpractice proceedings against an attorney, in Randall v Brigham, 7 Wall. 523 (1868), the authority of the courts was reiterated. The Court's opinion declared:

"It is not necessary that proceedings against attorneys for malpractice, or

any unprofessional conduct, should be be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from his own observation. Sometimes they are moved by third parties upon affidavit; and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney, of the charges made and opportunity afforded him for explanation and defense. The manner in which the proceeding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation."

See Justice Terrell's concurring opinion, where it was recognized that the public is losing faith in the profession and attorneys do not enjoy the public trust in their critical position as guardians of the people's rights. Dodd v The Florida Bar, 118 So. 2d 17 (Fla. 1960)

In Dodd v The Florida Bar, 118 So 2d 17 (Fla. 1960), Justice Terrell further remarked:

"This and other courts have many times called attention to the fact that one practices law by grace and not by right, that the practice of law is affected with a public interest and that the privilege to practice may be withdrawn from one when wilful disregard of the honor of the profession is shown. It is common knowledge that many lawyers personally enjoy public esteem and confidence, but

as a profession the public is skeptical of us and we do not enjoy the measure of public confidence we should." Id. 20

Judge Warren E. Burger, in describing the state of the legal profession, commented and posited the following proposition:

"(1) the legal profession as a whole has very poor standing;

(2) there are many causes for this, some of them incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and

(3) there is something we can and ought to do about this as the English bar and bench did a century ago."

See, Burger, A Sick Profession, 5 Tulsa L.J. 1, (January 1968)

Unless the organized bench and bar is able to meet the challenge and clean up its "own house" the state of the profession will remain in ill repute. Again in the words of Cardozo, "(i)f the house is to be cleaned, it is for those who occupy and govern it, rather than for strangers, to do the noisome work." People ex rel. Karlin v Culkin, 248 NY 465, 480; 162 NE 487 (1928)

In view of the above, the Court should deny Selburn's motion for dismissal, deny Selburn's motion for judgment on the pleadings, or in the alternative, deny Selburn's motion for Summary Judgment.

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

Filed August 9, 1979 - No. 9-72789
U. S. District Court

ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT

Now comes William R. McFadden, one of the co-defendants in the above cause, in his own proper person, and for his Answer to petitioner-defendant's Complaint for Declaratory Judgment, says:

PREAMBLE

1. Answering paragraphs 1 through 67 of petitioner-defendant's (hereinafter referred to as Cramer) Preamble, William R. McFadden either admits nor denies the allegations contained therein, not having sufficient documents and information any longer in his possession to answer; inasmuch as the records and files heretofore in his possession have been returned to Cramer, at her request, insistance and demand.

2. Answering paragraph 68, William R. McFadden denies the date referred to, to-wit: February 26, 1979, but admits filing two separate motions in the Michigan Supreme Court; and further denies that he refused to present anything "alternatively" and refused to prepare and file pleadings in the Federal Court "on anything, except a 'mutual covenant'"; and denies that there was any "glaring and serious defect", but admits that there was a "dispute between McFadden and Cramer" (and further and affirmatively states that said "dispute" arose as a consequence of the inability of Cramer to communicate and the incessant and unrelenting argument by plaintiff at conferences intended to prepare pleadings for filing, which arguments prevented and precluded the development of any pleadings and which culminated in a several hour conference in which partially pre-prepared pleadings by McFadden were under discussion

and at which Cramer refused, hour by hour, to discuss anything beyond the first page thereof, and as a consequence of which it was recognized by both Cramer and McFadden that representation was impossible); and McFadden denies that he is withholding "all of Cramer's papers, documents and copies of pleadings which he refuses to relinquish"; and further and affirmative states that:

(a) Cramer had, and has, copies of each and every of said papers, documents and copies of pleadings; and

(b) The return of said papers, documents and copies of pleadings was the subject matter of a motion to withdraw by McFadden filed in the Michigan Supreme Court and that all of said papers, documents and copies of pleadings were returned to Cramer immediately upon McFadden's becoming apprised of the existence of this law suit as a discharge of him as Cramer's attorney; and further, inasmuch as this law suit contains a Motion for rem oval of the matter in front of the Michigan Supreme Court to this Court, this suit amounts to a disposition of the Motion before the Michigan Supreme Court; and in support thereof, McFadden attaches hereto, and marks McFadden's Exhibit "1", and makes it a part hereof by reference, a letter addressed to Cramer from McFadden, dated July 23, 1979, and a receipt from the post office dated July 23, 1979, and a receipt from the post office dated July 25, 1979, for said papers returned to Cramer, which is marked McFadden's Exhibit "2"; and McFadden denies that Cramer is "severely handicapped" for reason that she at all

times has had, in her possession, all papers, documents and copies of pleadings as hereinabove set forth.

3. 1. Jurisdiction and Venue

Answering paragtaph 1.1, McFadden admits the paragraph, with the exception of the statement related to "competent counsel" and to the extent that this is a reflection on the capacity or ability of McFadden, said statement is denied for reason it is not true

4. Answering paragraphs 1.2 and 1.3, McFadden neither admits nor denies same, not having sufficient information upon which to form a belief; and further, said paragraphs do not refer to McFadden.

5. Answering paragraph 1.4, McFadden neither admits nor denies the allegations as relate to Abel Selburn and/or Allen Counard, not having sufficient information upon which to form a belief; but as to the allegations addressed to McFadden, McFadden admits the location of his office and that Cramer retained his services, but denies the allegations in the manner and form set forth that said services were specifically related to "said foreclosure matter", inasmuch as the foreclosure was a fact accomplished, whether proper or improper, years prior to the time Cramer first contacted McFadden.

6. Answering paragraphs 1.5 and 1.6, McFadden neither admits nor denies the allegations for reason he does not have sufficient information upon which to form a belief, and inasmuch as the allegations in no way relate to McFadden.

7. Answering paragraph 1.7 and the subparagraphs (a) through (k) contained thereunder, McFadden neither admits nor denies

the Federal Jurisdiction exists for Cramer under the statutory and Federal and Michigan Constitution and Federal citations referred-to thereunder as relates to the other defendants, but denies that said quoted law creates any Federal jurisdiction as relates to McFadden, for reason that no showing has been made of any connection between Cramer and McFadden as relates to any of said cited law.

8. Answering paragraph 1.8, McFadden denies that this has any relevancy to him.

9. Answering paragraph 1.9, McFadden denies that this Court has any jurisdiction as relates to McFadden, since no "Federal Questions" are raised in relation to him.

10. Answering paragraph 1.10, McFadden denies that this paragraph relates to him; and further, all actions under said cited Michigan Statute occured prior to, by several years, any involvement by McFadden with Cramer.

11. 2. Cause of Action & Federal Intervention

Answering paragraph 2.1 through 2.7, McFadden denies that the allegations have any relevancy or relation to McFadden.

12. 3. Wrongful foreclosure, slander of title

Answering paragraphs 3.1 through 3.11, McFadden denies that the allegations have any relevancy or relation to McFadden.

13. 4. Actual Controversy--State Action Involved

Answering paragraphs 4.1 through 4.8, McFadden denies that the allegations have any

relevancy or relation to McFadden.

14. 5. Wilfull and Malicious Tort

Answering paragraphs 5.1 through 5.4, McFadden denies that the allegations have any relevancy or relation to McFadden.

15. 6. Fraud, Concealment and Deception -- Attorney Malpractice

Answering paragraph 6.1 through 6.28, McFadden denies that the allegations have any relevancy or relation to McFadden.

16. 7. Fraud, Concealment or Deception -- Attorney Malpractice

Answering paragraphs 7.1 through 7.36, McFadden denies any involvement with McFadden.

17. 8. Conspirators -- Obstructionists of Justice

Answering paragraph 8.1, McFadden states that hte cited Federal Act will speak for itself.

18. Answering paragraph 8.2, McFadden neither admits nor denies the allegations as relates to Selburn and/or Counard; and denies the date of February 26, 1979, as relates to McFadden for reason it is not true; and further and affirmatively states that Cramer first contacted McFadden in February, 1979, but that a point of agreement was not reached on February 26, 1979, and was in fact never reached as to the full nature and extent of representation inasmuch as McFadden insisted that he first must read -- through several years of pleadings, correspondence, transcripts, testimony, court decisions and other material, amounting to any undetermined number of pages, but several pounds in weight, and that prior to the terms

of representation having been reach, representation was terminated as hereinabove set forth.

19. Answering paragraph 8.3, McFadden denies that the allegations have any relevancy or relation to McFadden.

20. Answering paragraph 8.4, McFadden incorporates each and every of his answers to paragraphs 1 through 7 above, and the sub-paragraphs thereunder, as though each-paragraph and sub-paragraph were fully restated; assuming that is what is meant by Cramer's statement that she realleges "each and every paragraph of the foregoing counts 1 through 8".

21. Answering paragraphs 8.5 and 8.6, McFadden denies that the allegations have any relevancy or relation to McFadden.

22. Answering paragraph 8.7, McFadden neither admits nor denies the allegations as relates to Selburn and/or Counard: but as relates to McFadden, McFadden denies that he was a "deterrent" and denies that "by design, with intent to defeat the due course of justice, managed the case so that plaintiff Cramer would never have a day in court on said foreclosure matter" for reason it is not true: and further and affirmatively states that said paragraph pleads a conclusion without a single supporting allegation of fact and therefore McFadden moves to strike said paragraph as relates to him.

23. Answering paragraph 8.8, McFadden neither admits nor denies the allegations as relates to Selburn and/or Counard; but as to McFadden, denies that he was a conspirator, that he impeded, hindered and/or obstructed plaintiff's rights to the equal protection of the laws. and denies that he acted in his own interest; denies that he

was an advisary to Cramer's cause and denies that any such allegation is "more fully set forth herein" and further and affirmatively states that Cramer pleads a conclusion without a single supporting allegation of fact and therefore McFadden moves to strike said paragraph as relates to him.

24. Answering paragraph 8.9, McFadden denies that he is currently withholding papers and that he refused to prepare and complete pleadings; and further and affirmatively states that the said papers, documents and files referred to by Cramer were at all times available to her, both in the particular that she had copies at all times of each and every of them and by reason that they were retained by McFadden pending his Motion to Withdraw in the Michigan Supreme Court and that it was fully explained both to Cramer and to the Michigan Supreme Court that the copies of said papers in his possession were available to be returned to Cramer at the earliest of the three following alternatives:

(a) Cramer's agreement to allow McFadden to withdraw as counsel;

(b) A granting by the Michigan Supreme Court of McFadden's Motion to Withdraw; or

(c) A hearing on the Motion for Re-hearing before the Michigan Supreme Court;

said papers, documents and files being necessary in order to properly argue said motion.

25. Answering paragraphs 8.10 and 8.11, McFadden denies that the allegations have any relevancy or relation to McFadden

26. Answering paragraph 8.12, McFadden neither admits nor denies the allegations as

relates to Selburn and/or Counard; but as relates to McFadden, he denies that he "conspired to deprive plaintiff due process of law with intent to deny the equal protection of the law for the reason that they do not want mortgagors to have any rights to the equal protection of the laws" for reason it is not true; and further & affirmatively states that Cramer pleads a conclusion without a single supporting allegation of fact and therefore McFadden moves to strike said paragraph as relates to him.

27. Answering paragraphs 8.13, 8.14 and 8.15, McFadden neither admits nor denies the allegations as relates to Selburn and/or Counard; but as to McFadden, he denies same for reason that the allegations are not true; and further and affirmatively states that Cramer pleads a conclusion without a single supporting allegation of fact and therefore McFadden moves to strike said paragraph as relates to him.

28. 9. Actual Controversy - Federal Action Involved

Answering paragraphs 9.1 through 9.25, McFadden states that the Federal Statutes and Regulations will speak for themselves; and further, these paragraphs do not relate to McFadden.

29. 10. Injunctive Relief Against Michigan Supreme Court Justices

Answering paragraphs 10.1 through 10.23, McFadden states that these paragraphs do not relate to him.

30. 11. Measure of Damages

Answering paragraph 11.1, McFadden denies that this paragraph has any relevancy to him;

and further and affirmatively states that this paragraph appears to seek damages in the sum of $100,000.00 against McFadden for "impairment of earning capacity, loss of time, special, general, exemplary and punitive damages" and to the extent it does, McFadden denies that Cramer is entitled to this relief; and further and affirmatively states that not one single allegation of fact has been plead in support of said claim for damages.

3. Answering paragraph 11.2, McFadden denies that Cramer is entitled to a trial by jury in this cause, inasmuch as this matter, as relates to McFadden, may be disposed of by Motion, which Motion said McFadden is here-with filing.

32. Answering Cramer's prayer for relief, paragraphs 12.1 through 12.7, McFadden denies that Cramer is entitled to any of the relief prayed for.

MOTION FOR JUDGMENT ON THE PLEADINGS

Now comes William R. McFadden, one of the defendants in the foregoing matter, and files this Motion under Title 28, U.S.C., Rule 12, as follows:

1. Cramer has failed to state a claim - upon which relief can be granted, as contemplated in Rule 12(b)(6) U.S., for reason that the only allegations, as relate to this defendant, are found in the Preamble, paragraph 68, paragraph (count)1, 1.4, where no allegation of fact is made supporting Cramer's claims; and in paragraph (count) 8, 8.2, where no allegation of fact is made; and paragraphs 8.7 8.8, 8.9, 8.12, 8.13, 8.14 and 8.15, each and all of which state conclusions of law and set forth no facts in support of said conclusions.

WHEREFORE, William R. McFadden moves for a

Judgment of no cause of action on the pleadings in this matter and prays that this Honorable Court award William R. McFadden costs and fees in having to defend in this matter.

/s/ WILLIAM R. McFADDEN
(P 17393) Defendant in pro per

Dated:
August 8, 1979

Filed August 20, 1979 - No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF MOTION FOR JUDGMENT ON PLEADINGS

FACTS

This is a lawsuit filed by plaintiff in proper person against numerous defendants, including defendant, William R. McFadden. Breaking the pleadings down, it would appear that plaintiff's claim against defendant, William R. McFadden, if any, sounds in conspiracy, WHICH MUST, OF NECESSITY, HAVE OCCURED PRIOR TO HIS ENTRY INTO THE CASE. The bulk of the allegations in this suit are allegations against various other attorneys, Metropolitan Savings & Loan Association, its officers and directors, and the Michigan Supreme Court and the Justices thereof.

Plaintiff pleads that defendant, William R. McFadden, was a private attorney allegedly engaged by plaintiff to perform legal services for her in Michigan state courts, and at no time pursuant to any state action whatso-ever. There is no allegation of diversity of citizenship.

ISSUES

I. Is there diversity of citizenship?

Plaintiff would answer "Yes"
McFadden does state the answer is "No"

II. Is there a Federal question presente

Plaintiff would answer "Yes"
McFadden does state the answer is "no".

III. Is there a claim upon which relief can be granted?
Plaintiff would answer "Yes"
McFadden does state the answer is "No"

ARGUMENT

Plaintiff is no stranger to the courts, and brings this action in pro per. She does not allege diversity of citizenship. On the contrary, she alleges she is a citizen of Wayne County, Michigan, and defendant, William R. McFadden, is an attorney with offices in Oakland County. Plaintiff does not rely upon diversity of citizenship to maintain her action in the Federal courts. 28 USC 1332.

Neither does plaintiff present a Federal question in order to predicate Federal jurisdiction herein. Jurisdiction cannot be based on the ground of a Federal question through a mere conclusion that a Federal question or the construction of a Federal statute is involved, where no supporting facts are alleged. Also, it cannot be based on a mere assertion that State law or action is lacking in due process. See Douglas v City of Jeannette, 130 F2d 652, Affirmed 319 US 157.

Likewise, defendant, William R. McFadden, moves to dismiss for failure to state a claim upon which relief can be granted, under Rule 12, Federal Rules of Civil Procedure, or in

the alternative, as a Motion for Summary Judgment under Rule 56. As to defendant, William R. McFadden, plaintiff's allegations are in the form of conclusions, not in allegations of facts. (Paragraphs 68 of Preamble, 1.4, 8.2, 8.7, 8.8, 8.9, 8.12, 8.13, 8.14 and 8.15). A claim and right to relief thereon can be shown only by alleging sufficient facts; not by merely alleging conclusions of law. A claim cannot be stated solely in the form of legal conclusions, and conclusions of law standing alone cannot sufficiently advise the adverse party so he can prepare his defense or inform the Court so it can determine the question sought to be presented. See Sheridan-Wyoming Coal Co., Inc. v. Krug, 168 F2d 557. Characterization of acts by legal attributes or consequences is a conclusion. Assertion of a failure to render service is a conclusion and cannot suffice to show such matter. Ulrich v Freedman, 196 F. 113.

RELIEF PRAYED FOR

William R. McFadden prays that this matter be dismissed as to defendant, William R. McFadden.

/s/ WILLIAM R. McFADDEN (P17393)
Defendant in Pro Per

Dated:
August 17, 1979

Filed September 26, 1979 - No. 9-72789
U. S. District Court

PETITIONER'S REPLY TO (McFADDEN'S) ANSWER TO COMPLAINT

Now comes Petitioner-Cramer, in pro per, and replying to Defendant-McFadden's answer to complaint, she says as follows:

1. Replying to paragraph 1, regarding McFadden's answer to paragraph 1 through 67 of petitioner's Preamble, Petitioner-Cramer states and avers that Defendant-McFadden returned only a smaller portion of Cramer's records and files, and that it was necessary for her to make many and numerous additional copies for filing in the Federal Court, for the reason that Defendant-McFadden still withheld and is still withholding a large part of Cramer's records and files.

2. Replying to paragraph 2, regarding Defendant-McFadden's answer to paragraph 68 (Preamble), Petitioner-Cramer states and avers that on February 26, 1979, Petitioner-Cramer was in Defendant-McFadden's office, in person, on said date of February 26, 1979 and in his presence, and at his request for retainer and fees for so-called legal servic Petitioner-Cramer wrote her check for $1,000 and gave said check to Defendant-McFadden in his office, on said date of February 26, 197 and the said check is dated February 26, 197

Further, replying to paragraph 2, Petitio er-Cramer states and avers that the said "di pute" was so prevalent that it necessitated an immediate telephone call to the Grievance Commission of the Michigan State Bar, on an emergency, and to relate said dispute to sai Grievance Commission member, and that almost immediately after said telephone conversatio Defendant-McFadden began pressuring Cramer t "sign a substitution." Cramer denies that said "dispute" arose as a consequence of the inability of Cramer to communicate, and the reverse is true. Further, Defendant-McFadde attitude and apprisal of the "case" was completely changed and reversed after he receiv the $1,000.00 payment from Cramer.

Further, the "dispute" between Cramer and

McFadden regarding the first page of the drafted papers by McFadden, is that it contained erroneous and falsified matters, and which Cramer objected to and refused to permit in said "pleadings."

Further, "disputes" between Cramer and McFadden regarding other matters, in this case, is where his drafted papers were designed to cover-up for the negligence and misconduct of the other two (2) lawyers, Selburn and Counard, who were managing the prior action (Wayne 115-792) whom your Petitioner hired. Further, at every step, along the way, your Petitioner has had to deal with, constantly and unreasonably, with the prevarications and misrepresentations of lawyers. (on both sides)

Further, in capsule form herein, Defendant-McFadden's denials are prevarications and misrepresentations, and do not deserve such waste of time and energy by your Petitioner-Cramer or by the Court.

WHEREFORE Petitioner-Cramer prays that Defendant-McFadden's motion for judgment on the pleadings be denied.

/s/ Virginia Cramer,
Petitioner in pro per —
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

(Affidavit attached)

Filed September 26, 1979 No. 7-72789
U. S. District Court

OPPOSITION TO (McFADDEN'S) BRIEF IN SUPPORT OF MOTION FOR JUDGMENT ON PLEADINGS

This Honorable court has said (by letters directed to the parties herein) that untimely

responses will not be considered by the Court.

The docket entries, in the above-captioned matter, show as follows:

Aug 8, 1979 16. Deft McFadden's Motion for Judgment on pleadings with Answer to Complaint for declaratory judgment with Notice of hearing to be set and proof of service.
DD 8/8/79

Aug 20, 1979 28. Deft William McFadden's Brief in Support of Motion for Judgment on Pleadings.
DD 8/21/79

As noted, Defendant-McFadden's "Motion for Judgment on the Pleadings" was entered in the court record without a brief, and said "Motion" should not have been docketed on August 8,1979.

Further, Defendant-McFadden's "brief" contains "insufficient defense, immaterial and impertinent" matters, such as:

> "Breaking the pleadings down, it would appear that plaintiff's claim against defendant, William R. McFadden, if any, sounds in conspiracy, WHICH MUST, OF NECESSITY, HAVE OCCURED (sic, OCCURRED) PRIOR TO HIS ENTRY INTO THE CASE."
>
> "There is no allegation of diversity of citizenship."

Further, it appears that Defendant-McFadden has copied from Defendant-Abel Selburn's brief, dated August 14, 1979, and that said "copying" is almost word for word.

That the said insufficient defense, immaterial and impertinent matters should be

stricken from the records. That the said "brief" by Defendant-McFadden did not accompany his "Motion for Judgment on the Pleadings" and therefore, said "Motion for Judgment on the Pleadings" and said "Brief in Support of Motion for Judgment on the Pleadings" should be stricken from the records and the court should refuse to consider the untimely filed matter. The Court can see that the pleadings of Defendant-Abel Selburn and the pleadings of Defendant-McFadden are almost identical, and because of the untimeliness of Defendant-McFadden's "brief" and having been copied from Defendant-Selburn's pleadings, Defendant-McFadden's "Brief" should be stricken from the record.

/s/ Virginia Cramer
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

Filed September 26, 1979 No. 9-72789
U. S. District Court

OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS

Now comes Petitioner-Cramer, in pro per, and in opposition to Defendant-attorney-McFadden's motion for judgment on the pleadings, she says as follows:

1. In Opposition to paragraph 1, Petitioner-Cramer states and avers that "the illegal purpose intended by the conspiracy and the fact that the purpose has been carried out to the plaintiff's damage is sufficient"; (see Petitioner-Cramer's brief, attached) and further, the court may take judicial notice of matters involving attorney-misconduct, malpractice, incompetence, misrepresentations, fraud and deceit and concealment, from the

pleadings and/or from the attorney's conduct in open court.

2. In opposition to Defendant-attorney-McFadden's insufficient defense of "no diversity" and any other impertinent, immaterial and/or redundant matters, the court may take judicial notice and should not be considered by the court, or the court may order said insufficient defense or immaterial, impertinent matters stricken from any pleading, on it's own initiative at any time.

3. Petitioner-Cramer's affirmative matters are as follows:

Relief sought -- Reformation of prior action "Judgment" and decision

Money damages incurred

Writ of error, coram non judice

And such other and further relief as is agreeable with equity and good conscience.

etcetera.

Respectfully submitted,
/s/ Virginia Cramer, Petitioner in pro per - Defendant in wrongful foreclosure

Dated: Sept 20 1979

BRIEF IN SUPPORT OF OPPOSITION TO (McFADDEN'S) MOTION FOR JUDGMENT ON THE PLEADINGS

FACTS

It is apparent that Defendant-attorney-

McFadden has copied, almost word for word, from the pleadings filed and subm itted by Defendant-attorney-Selburn. Where Cramer has stated that Defendant-attorney-Abel Selburn and Defendant-attorney-McFadden, together, have resen to the level of their own incompetence, the two together should be joined in holy malpractice, until death do them part. They must be married to each other.

(Pro se pleadings of a non-lawyer should be liberally construed by the court.)

ARGUMENT

"Judgment on the pleadings" is not proper where there are issues of material fact. Rule 56. (FRCP)

"No diversity" is an insufficient defense and is impertinent and a sham issue, and should be stricken from the pleadings and records of the court. Rule 12. (FRCP)

Petitioner-Cramer's allegaionts of fraud, concealment and deceit, together with matters of attorney malpractice are pleaded with particularity, as required, Rich v Touche Ross and Company (DC NY) 68 FRD 243.

"A declaration which alleges the illegal purpose intended by the conspiracy and the fact that the purpose has been carried out to the plaintiff's damage is sufficient, even though not specifically showing the means used." Scofield v Clarke, 1914, 146 NW 377, 197 Mich 681.

In a most significant aspect of a decision involving malpractice proceedings against an attorney, in Randall v Brigham, 7 Wall. 523 (1868), the authority of the courts was reiterated. The Court's opinion declared:

"It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from his own observation. Sometimes they are moved by third parties upon affidavit; and sometimes they are taken by the court upon its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney, of the charges made and opportunity afforded him for explanation and defense. The manner in which the procedding shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation."

See Justice Terrell's concurring opinion, where it was recognized that the public is losing faith in the profession and attorneys do not enjoy the public trust in their critical position as guardians of the people's rights. Dodd v. The Florda Bar, 118 So 2d 17 (Fla. 1960). In that case, Justice Terrell further remarked:

"This and other courts have many times called attention to the fact that one practices law by grace and not by right, that the practice of law is affected with a public interest and that the privilege to practice may be withdrawn from one when wilful disregard of the honor of the profession is shown. It is common knowledge that any lawyers personally enjoy public esteem and confidence, but as a profession the public is skeptical of us and we do not enjoy the measure of public confidence we should." Id. 20

Judge Warren E. Burger, in describing the state of the legal profession, commented and posited the following proposition:

"(1) the legal profession as a whole has very poor standing;

(2) there are many causes for this, some them incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and

(3) there is something we can and ought to do about this as the English bar and bench did a century ago."

See, Burger, A Sick Profession, 5 Tulsa L. J. 1, (January 1968)

Unless the organized bench and bar is able to meet the challenge and clean up its "own house" the state of the profession will remain in ill repute. Again in the words of Cardozo, "(i)f the house is to be cleaned, it is for those who occupy and govern it, rather than for strangers, to do the noisome work." People ex rel. Karlin v Culkin, 248 NY 465, 480; 162 NE 487 (1928)

In view of the above, the Court should deny Defendant-McFadden's motion for judgment on the pleadings.

Respectfully submitted,
/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

Filed August 31, 1979 - No. 9-72789
U. S. District Court

MOTION TO DISMISS POST-REMOVAL ADDITIONAL DEFENDANTS AND COMPLAINTS AND REMAND ORIGINAL PROCEEDING

The Federal Home Loan Bank Board, its director and officers, by and through James K. Robinson, United States Attorney, and Samuel J. Behringer, Jr., Assistant United States Attorney, both for the Eastern District of Michigan, respectfully moves this court pursuant to Federal Rules of Civil Procedure Rules 12 and 56 to strike the plaintiff's post-removal complaints, dismiss all new defendants added after removal and remand this entire action to the appropriate state court for the reasons set forth in the accompanying brief.

As required by Local Court Rule IX, movant's counsel attempted to seek the plaintiff's concurrance to the requested relief by telephone on August 21, 1979 but plaintiff refused to acquiesce and it therefore is necessary to file this motion.

Respectfully submitted,
JAMES K. ROBINSON
United States Attorney
/s/ SAMUEL J. BEHRINGER, JR.
(P23751)
Assistant United States Atty.

Dated:
8-30-79

Filed August 31, 1979 - No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF MOTION TO DISMISS POST-REMOVAL ADDITIONAL DEFENDANTS AND COMPLAINTS AND REMAND ORIGINAL PROCEEDING

The Federal Home Loan Bank Board, by and through its undersigned attorneys, submits

this brief in support of its instant motion.

Statement of the Proceedings

This instant action, as removed, requires attention to the proceedings in two different court systems.

A. STATE COURT PROCEEDINGS

In 1963 Cramer purchased a home with funds loaned by the Metropolitan Federal Savings and Loan Association and gave a mortgage to Metropolitan to secure the loan. (Plaintiff's Preamble paragraph 1, page 2). A dispute subsequently developed between Cramer and Metropolitan which caused Metropolitan to commence proceedings to foreclose the mortgage given by Cramer by advertisement in May of 1968. (Plaintiff's Preamble paragraphs 2-10, pages 2-5).

I. WAYNE COUNTY CIRCUIT COURT CIVIL ACTION 115-702 (sic. 115-792)

Cramer disputed the propriety of the foreclosure and eventually commenced a civil action in the Wayne County Circuit Court of the State of Michigan to, among other things, enjoin the foreclosure sale. (Plaintiff's Preamble, paragraph 33). The action was designated as Civil Action No. 115 792 and was styled:

VIRGINIA CRAMER, Plaintiff

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, Defendant.

This pleading did not include the Federal Home Loan Bank Board or any of its directors

or officials as party-defendants. At this point in time Cramer was represented by counsel.

In subsequent proceedings in that court, a restraining order which had been issued was dissolved, a finding of default was made and Metropolitan was permitted to proceed to sale. (Plaintiff's Preamble, paragraphs 34 and 36, pages 9-10). After subsequent proceedings, a Judgment adverse to Cramer was entered which she appealed to the Michigan Court of Appeals. (Plaintiff's Preamble, paragraphs 38-42, pages 10-11).

The Michigan Court of Appeals reversed the Circuit Court and remanded the cause back to the latter court for further proceedings. At this point, Cramer received permission from the court to file an Amended Complaint styled as:

VIRGINIA CRAMER, Plaintiff

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, JAMES I. McCLINTOCK, Chairman of Board of Directors, ROGER C. RICHARDS, President, JOHN C. DENYER, Assistant Vice-President, JOHN DOE, Members of the Board of Directors, RICHARD ROE, Vice-President and ALL OTHER OFFICERS OF METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION,

Defendants

This Amended Complaint did not include the Federal Home Loan Bank Board or any of its directors or officials as named party-defendants. It also did not include any members of the Michigan Supreme Court or the individually named attorneys.

In the course of proceedings upon the

Amended Complaint, Cramer availed herself of discovery and participation in pretrial proceedings. (Plaintiff's Preamble paragraphs 44-45, pages 11-12). She was not represented by new counsel, Allen Counard. Cross Motions for summary judgment came to be heard. On February 7, 1972 the Circuit Court ruled against Cramer and entered judgment in favor of Metropolitan on all counts.

A second appeal was lodged with the Michigan Court of Appeals from the February 7, 1972 determination which resulted in an affirmation of the Circuit Court's decision on all counts except Count IV. The matter was therefore remanded back to the Circuit Court for further proceedings upon Count IV. (Plaintiff's Preamble paragraph 53, page 14). A jury trial upon Count IV concluded with an adverse opinion to Cramer. (Plaintiff's Preamble paragraphs 54, page 14).

Cramer initiated her third appeal through the state court system. On October 6, 1977 the Michigan Supreme Court affirmed in favor of Metropolitan. Cramer v Metropolitan, 401 Mich 252 (1977). Two rehearing requests were denied by the Michigan Supreme Court on December 15, 1977 and February 1, 1979. (Plaintiff's Preamble paragraph 58, page 15).

Proceeding in pro per, Cramer then sought certiorari from the Supreme Court of the United States on April 27, 1978. The United States Supreme Court denied her petition on June 12, 1978.

II. WAYNE COUNTY CIRCUIT COURT CIVIL ACTION NO. 78-822-879 CZ

Following the United States Supreme Court denial of her certiorari petition, Cramer initiated a second action in the Wayne County Circuit Court on July 14, 1978. It was

designated as Civil Action No. 78-822-879 CZ and was styled as:

VIRGINIA CRAMER, Petitioner-Defendant (in wrongful foreclosure action)
Petitioner-Plaintiff

VS

METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, severally and individually, Plaintiffs in wrongful foreclosure action,
Defendants.

and
McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, attorneys at law, jointly, severally & individually
Co-Defendants.

and
ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, attorneys at law, jointly, severally and individually.
Co-Defendants.

This pleading did not include the Federal Home Loan Bank Board or any of its directors or officials as party-defendants. Cramer did not prevail in obtaining the relief sought in this second civil action. Appeal was again pursued through the state court system. On February 7, 1979 the Michigan Supreme Court denied Cramer leave to appeal and, on May 3, 1979, denied her motions to reconsider that denial and for other relief. (Plaintiff's Preamble paragraph 67, pages 18-19). Yet another counsel (William R. McFadden) was retained who filed a third motion to withdraw as counsel. These motions have not been determined. (Plaintiff's Preamble paragraph 68, page 19).

B. FEDERAL DISTRICT COURT PROCEEDINGS

While Cramer awaited a disposition upon the three motions she had pending before the Michigan Supreme Court in her second civil action, she initiated the instant removal from the Michigan Supreme Court to this Federal district court.

I. THE REMOVAL

On July 20, 1979 Cramer, proceeding in pro per, filed a Petition for Removal of Cause to the Un ited States District Court for the Eastern District of Michigan. It was designated by the Clerk of the Court of the United States District Court for the Eastern District of Michigan as Civil Action No. 9-72789. As presented by Cramer, the removal petition identified each of the two state circuit court civil actions by their respective circuit (115-792 and 78-822-879CZ) and appellate court numbers. The parties were styled as:

VIRGINIA CRAMER, Petitioner-Defendant
(in wrongful foreclosure action)
Petitioner-Plaintiff,

VS

METROPOLITAN SAVINGS ASSOCIATION,
a/k/a METROPOLITAN FEDERAL SAVINGS AND
LOAN ASSOCIATION, JAMES I. McCLINTOCK,
ROGER C. RICHARDS and JOHN C. DENYER,
Jointly, severally and individually,
Plaintiffs in wrongful foreclosure action,
Defendants

and
McCLINTOCK DONOVAN CARSON & ROACH and
JAMES I. McCLINTOCK, MICHAEL DOELLE
and WILLIAM P. THORPE, attorneys at law,
jointly, severally & individually,
Co-Defendants

and
ABEL SELBURN, ALLEN COUNARD and WILLIAM R.
McFADDEN, attorney at law, jointly sever-
ally and individually, Co-Defendants

and
FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge
Co-Defendants
and
MICHIGAN SUPREME COURT Members, Justices Mary C. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., jointly, severally and individually,
Co-Defendants.

This is the first time in more than eleven years of litigation that either the Federal Home Loan Bank Board, the Michigan Supreme Court or any of its individual Justices were named as party-defendants to these proceedings. The files of all proceedings do not included any order permitting the joinder of these parties either prior to or after rem oval by either judge in the state court system or this federal district court.

II. COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, AND MONEY DAMAGES FOR INJURY TO PERSON AND PROPERTY AND DEMAND FOR TRIAL BY JURY.

On the same date that Cramer filed her removal petition, she also filed as part of the removed action, a Complaint for Declaratory Judgment, Reversal of Michigan Supreme Court Decision, Injunctive Relief and Money Damages for injury to Person and Property and Demand for Jury Trial. This 19 page compalint appears incomplete in that it consists of 68 numbered paragraphs which end at page 19 without a clause for relief. It is styled:

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VIRGINIA CRAMER, Petitioner
Plaintiff

VS

METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, jointly, severally and individually,
Defendants

and

McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, attorneys at law, jointly, severally & individually,
Co-Defendants

and

ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, attorney at law, jointly, severally and individually,
Co-Defendants

and

FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge
Co-Defendants

and

MICHIGAN SUPREME COURT Members, Justices Mary S. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., jointly, severally and individually,
Co-Defendants

/

Civil Action
No. 9-72789

MSC
No. 62249

Mich Ct of
Appeals
No. 78-3794

Wayne
Cir. Ct.
78-822-879CZ
(Commenced
7-14-78)

Prior Action
(Wayne)
No. 115-792

Mich Sup.Ct.
No. 57215
reported at:
401 Mich 252

COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY AND DEMAND FOR TRIAL BY JURY

III. COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT - DECISION, INJUNCTIVE RELIEF, (INTERVENTION) AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY.

A second complaint was also filed as part of the removed action. This complaint consists of 35 pages and 12 numbered paragraphs. It is styled:

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION-DETROIT

VIRGINIA CRAMER, Petitioner Plaintiff	Civil Action No. 9-72789
VS	
METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, et al Defendants	MSC No. 62249
and McCLINTOCK DONOVAN CARSON & ROACH et al Co-Defendants	Mich Ct. Appeals 78-3794
and ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, attorneys at law, jointly, severally and individually, Co-Defendants	Wayne Cir. Ct. No. 78-822-879 CZ (Commenced 7-14-78)
and FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge Co-Defendants	Prior Action (Wayne) No. 115-792
and MICHIGAN SUPREME COURT Members, Justices Mary C. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., jointly, severally and individually, Co-Defendants	

COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, (Intervention) AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY

This second complaint asserts, in part, that the Federal Home Loan Bank Board encourages and allows improper conduct by its insured and thereby purports to allege state and federal constitutional issues and conspiratorial designs.

ARGUMENT

This movant seeks two types of relief. First, the movant asserts that the additional defendants and both complaints filed by Cramer as part of the removed civil action after removal should be dismissed. Second, the movant assets that, upon dismissal of the post-removal additional defendants and complaints, this court should remand the original proceeding to its appropriate state court 1/.

I. DISMISSAL OF ALL POST-REMOVAL ADDITIONAL DEFENDANTS AND COMPLAINTS

There are several reasons which require this court to dismiss any defendant and complaint joined or filed as part of the removed civil action after the removal.

1/ Movant notes that 28 U.S.C. 1446 provides the right of removal to defendants if exercised within 30 days after receipt of pleadings or service. Movant is not aware of any authority which permits a plaintiff to remove her own action to a different court.

A. PLAINTIFF COULD NOT UNILATERALLY JOIN NEW DEFENDANTS AS PART OF THE REMOVED CASE OR SUBSEQUENT TO REMOVAL WITHOUT LEAVE FROM THE COURT.

When Cramer rem oved the proceedings in Wayne County Circuit Court Civil Action 78-822-879 CZ (or 115-792) to this federal district court, the removed civil action had never previously included either the Federal Home Loan Bank Board (or any of its Directors or officers) or the Michigan Supreme Court or any of its Justices as party-defendants. The files of both state court actions do not include any order which granted Cramer leave from either court to join these particular parties as defendants in either action.

Rather, review of the pleadings indicates that Cramer unilaterally joined these particular parties as she drafted her removal pleadings and two post-removal complaints. The simple fact is that the Federal Home Loan Bank Board and the members of the Michigan Supreme Court were never parties to the removed action prior to the removal. Inasmuch as the state courts never had jurisdiction over these defendants, this Federal district court is also without jurisdiction over these same defendants.

More importantly, whether before or after removal, the fact that Cramer never obtained leave from any court to join these parties as defendants compel their immediate dismissal. Prior to removal, Cramer had to seek leave from the state courts under the appropriate Michigan General Court Rules to join these new defendants. GCR 118, 204.2 and 205. She never sought such leave, it was never granted to her by any state court, and opposing counsel never so stipulated.

Subsequent to removal, Cramer could not unilaterally join these parties as defendant but is required by Federal Rules of Civil Procedure Rule 21 to seek leave to joint such new parties. Spencer v Dixon, 290 F. Supp. (W.D. La. 1968); Perry v Snyder, 33 F.R.D. 361 (E.D. Penn. 1963). She never sought such leave from this Federal district court, it has never been granted to her and the parties have never so stipulated.

B. PLAINTIFF COULD NOT UNILATERALLY FILE TWO NEW COMPLAINTS AS PART OF THE REMOVED ACTION.

The plaintiff has caused her two post-removal complaints to be designated as part of rem oved Civil Action 9-72789. The problem with such a tactic is that Cramer never obtained leave from this federal distric t court to expand the controversy posed by her rem oved civil action to include two new additional complaints. Whether viewed as joined or amended complaints, leave had to be obtained from this Federal district court before the two additional complaints could be filed as part of Divil Action No. 9-72789. Federal Rules of Civil Procedure Rules 15(a) and 21. Perry v. Snyder, 33 F.R.D. 361 (E.D. Penn. 1963).

C. PLAINTIFF HAS NO SUBSTANTIVE RIGHT OF ACTION AGAINST THE FEDERAL HOME LOAN BANK BOARD.

Assuming arguendo that this Court does not accept the above two arguments, the Federal Home Loan Bank Board should nevertheless be dismissed as a party defendant pursuant to Federal Rules of Civil Procedure Rule 12 due to a lack of jurisdiction on the part of this court over the person and subject matter and a failure to state a claim upon which relief can be granted. Three points augment this argument.

I. THE FEDERAL HOME LOAN BANK BOARD CANNOT BE SUED BY THIS PLAINTIFF.

First, the Federal Home Loan Bank Board is an independent agency in the executive branch of the Federal government. 12 U.S.C. 1437. It was created to provide at all times a flexible credit reserve for member savings institutions engaged in home mortgage lending. 12 U.S.C. 1421. Being a federal agency the rule is noted that the United States, as sovereign is immune from suit save as it consents to be sued and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit. United States v Sherwood, 312 US 584, 586 (1940). Where Congress has not authorized a government entity to be sued eo nominee, the entity cannot be sued. Blackmar v Guerre, 342 U.S. 512, 517 (1951). The only express waiver of sovereign immunity which permits suit against the Federal Home Loan Bank Board allows the Bank Board to be sued only "by any Federal savings and loan associations or director or officer thereof . . ." 12 U.S.C. 1464(d)(1)2/. Plaintiff Cramer is not such an entity or actor. The recent change in the statute 3/ has been interpreted by the courts as a clear indication by Congress to limit the type of parties that may sue the Board to just Federal savings and loan associations and officers and directors thereof. Chase Save & Loan Assn. v Federal Home Loan Bank Board, 269 F.Supp. 965 (ED Pa. 1967).

2/ Prior to October 16, 1966, Section 1464(d)(1) of Title 12, U.S.C., read that "(T)he Board shall have the power to sue and be sued, complain and defend in any court of competent jurisdiction in the United States."

3/ Footnote 2, supra.

Moreover, courts have recognized that:

> "It is clear that the amendment to 12 U.S.C.A. 1464(d)(1) indicates an intent by Congress that the Board not be liable for money damages, regardless of who the plaintiff might be. S. Rep. 1482, 89th Cong., 2d Sess., reprinted in 1966 U.S. Code Cong. & Admin. News, pp. 3532, 3541. Central Savings & Loan Assn. v Federal Home Loan Bank Board, 293 FSupp 617, 621 (S.D. Iowa 1968).

It is therefore well settled in the law that this individual plaintiff may not sue the Federal Home Loan Bank Board for any relief. Central Savings & Loan Ass'n v Federal Home Loan Bank Board, 293 F.Supp. 617 (S.D. Iowa 1968), aff'd, 422 F.2d 504 (8th Cir. 1970). Putting aside the fact that one of her two complaints is incomplete, neither complaint can state a cause of action against the Board because this court has no jurisdiction over the person and subject matter. Pursuant to Federal Rules of Civil Procedure Rule 12(b), both the complaints should be dismissed insofar as both concern the Federal Home Loan Bank Board.

II. THE BASIS OF PLAINTIFF'S SUITS DO NOT STATE A CLAIM UPON WHICH RELIEF CAN BE BASED.

Assuming arguendo that this court's examination of plaintiff's two actions goes even further, it is respectfully submitted that the plaintiff's allegations against the Board do not state any claim upon which relief can be granted.

Plaintiff's two complaints cite the Fifth and Fourteenth Amendments, 42 U.S. 1983, 1985, 1986 and 1988, 28 USC 1343, 12 USC 1461, 12 USC 1701, 15 USC 1 and 28 USC 1441 are jurisdictional basis. None of these statutes

found jurisdiction in this court. As concerns 15 USC 1, the United States and its agencies may not violate the Sherman Antitrust Act. Eastern RR Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961); Adams v. American Bar Ass'n, 400 F.Supp. 219 (D.C. N.J. 1975). 12 U.S.C. 1701, et seq., only pertains to the Secretary of Housing and Urban Development which is an entirely different entity than the Federal Home Loan Bank Board. 12 U.S.C. 1461, as pointed out above, only allows the Board to be sued by Federal savings and loan associations. Savings & Loan Ass'n v. Federal Home Loan Bank Board, 293 F.Supp. 617, 621 (SD Iowa 1968). Cramer's civil rights jurisdictional citations (28 USC 1343 and 42 USC 1983, 1985, 1986 and 1988) also fail to meet jurisdiction in this court because, assuming other things, the statute of limitation for bringing such an action has expired.

No federal statute provides any limitation period to actions under the Federal Civil Rights Act. Therefore, "the time for filing an action under the Federal Civil Rights Act is controlled by the applicable period of limitations in a civil rights action is that period which state courts would apply if the action were brought in a state court under state law. Mulligan v Schlachter, 389 F2d 231 (6th Cir. 1968).

Under the law of the State of Michigan, civil rights actions are subject to a three (3) year statute of limitations. Krum v Sheppard, 407 F2d 490 (6th Cir. 1967); Gordon v City of Warren, 415 F.Supp 556 (E.D. Mich 1976). The movant submits that if this action is viewed as being a civil rights action it is barred by the statute of limitations because the plaintiff failed to timely file suit within the provided three year period. The 19 page (Non-inter-

vention) Complaint (which appears to be incomplete) fails to even mention the Federal Home Loan Bank Board outside of its caption. The "Intervention" Complaint complains of an alleged "premature, precipitous and fraudulent" foreclosure on May 23, 1968 (Paragraph 7.28 page 23) and then subsequently complains (at paragraph 9.18 and 9.19) that the Federal Home Loan Bank Board is engaged in a conspiracy due to its involvement in the home mortgage insurance program. Now, more than eleven (11) years later, she has commenced these two actions against the Board. By any calculation, the statute of limitations has expired and Cramer cannot state a claim upon the various civil rights statutes.

III. AFTER DISMISSAL OF ALL POST-REMOVAL DEFENDANTS AND COMPLAINTS, THE REMOVED ACTION SHOULD BE REMANDED ENTIRELY TO THE APPROPRIATE STATE COURT.

Upon dismissal of the improper post-removal joined defendants and new complaints, movant also submits that this Court should remand the remaining litigation to the particular state court from which it was removed.

A. PLAINTIFF COULD NOT REMOVE THIS ACTION

Plaintiff had her choice of forums when she commenced Civil Actions 115 702 (sic, 115 792) and 78 822 879 CZ in the Wayne County Circuit Court. She is not now entitled to go shopping for a new forum. As pointed out in Footnote 1 above, 28 USC 1446 only provides the right of removal to partys defendant and such parties must exercise the removal within no more than 30 days after receipt of pleadings or service. The statute does not provide a right of removal to a plaintiff and m ovant is

not aware of any authority which permits a plaintiff such as Cramer to unilaterally remove her own action to an entirely different court system after years of litigation and appeals have occurred.

B. PLAINTIFF WAIVED ANY RIGHT TO REMOVE

Not conceding that Cramer was not entitled to remove this action, the substantial passage of time, the litigation that ensued during that duration and Cramer's failure to promptly remove amounts to a waiver of any right to remove. 1A Moore's Federal Practice 0.159(a), o.168(4-1).

C. THE REMOVAL PETITION FAILS TO STATE A VALID GROUND FOR REMOVAL.

The burden of proof in a remand proceeding is upon the party who removed to show that the suit was properly removed. 1A Moore's Federal Practice 0.168(4-1)40. The lack of standing on Cramer's part to sue the Federal Home Loan Bank Board precludes diversity jurisdiction. See Section C1 above. The Cramer assertion that "Federal jurisdiction is founded on the extant controversy of a civil rights question . . . the enforcement of MCLA 600.3201 et seq . . . and the U. S. Constitution, Amendments Fifth and Fourteenth . . . " (Para. 1.7) is not sufficient in light of the above to vest jurisdiction in this court. The statute of limitations has expired as to the new post-removal defendants and complaints. And, with regard to the pre-removal matters, the controversy has already been adjudicated several times.

CONCLUSION

Cramer has abused the removal process and has also failed to properly respect the roles

of this Court and her opposing counsel in participating in the procedural processing of this litigation. As a party plaintiff, Cramer has absolutely no right to remove her state court action or actions to this Federal district court. And, after removal, Cramer had absolutely no right to unilaterally join new parties and file two new complaints as part of the removed action involving either the Board or the Members of the Michigan Supreme Court. The post-removal parties and complaints required obtaining leave from this Federal district court before the joinder and filing. Such a matter is committed to the discretion of this court and the plaintiff is bound both to seek the exercise of that discretion and to respect it. Having failed to do so, the new parties and complaints joined and filed after removal without leave from this Court should be struck and dismissed and the remaining removed matter should be immediately remanded to the particular state court from which it was removed.

Respectfully submitted,
JAMES K. ROBINSON
United States Attorney
/s/ SAMUEL J. BEHRINGER, JR.
(P23751) Assistant United States Attorney

Dated:
8-30-79

Filed September 26, 1979 No. 7-72789
U. S. District Court

OBJECTIONS TO MOTION TO DISMISS POST-REMOVAL ADDITIONAL DEFENDANTS AND COMPLAINTS and OBJECTIONS TO MOTION TO REMAND ORIGINAL PROCEEDING

Petitioner-Cramer, Defendant in wrongful foreclosure action, in pro per, objects to the Federal Home Loan Bank Board's motion to

dismiss post-removal additional defendants and complaints and Petitioner-Cramer objects to motion to remand original proceeding, and she says as follows:

1. That the Federal Home Loan Bank Board is without standing to ask the Federal District Court to "strike" Petitioner's complaints, and no grounds or reasons are set forth in the pleadings submitted by the United States Attorney.

2. That the Federal Home Loan Bank Board is without standing to move for dismissal of all new defendants added after removal, which some of the new defendants are members of the Michigan Supreme Court.

3. That the Federal Home Loan Bank Board is without standing to motion the court for 'remand' of this entire action.

4. That the Assistant United States Attorney, Samuel J. Behringer, Jr., who signed the pleadings on behalf of the Federal Home Loan Bank Board and its Director, officer and/or official in charge, Co-Defendants herein, did not mention anything to your Petitioner-Cramer about "concurrance to the requested relief" by telephone on August 21, 1979, and said Attorney, Samuel J. Behringer, Jr., mentioned nothing to your Petitioner-Cramer regarding any kind or manner of relief.

5. That the State court would not have jurisdiction as to the Federal Home Loan Bank Board, on "remand."

6. That Petitioner-Cramer is actually a Defendant-mortgagor, in a wrongful foreclosure action, and in that status, she has the right to remove ex parte, and that Co-Defendants Federal Home Loan Bank Board are not parties to the "removed" action, and

have no standing to object to the ex parte rem oved action.

7. That Co-Defendants Federal Home Loan Bank Board have no standing to ask the Court to "dismiss" after removal.

8. That the remedy for non-joinder is joinder by the court, where justice requires, Rule 19 (a), Rule 21. (FRCP)

9. That the Co-Defendant Federal Home Loan Bank Board is an indispensable party in the separate and independent causes as shown in Petitioner-Cramer's complaint. Rule 19 (b), and separate and independent from the "removed" action.

10. That misjoinder is not ground for dismissal of an action. Rule 21. (FRCP)

11. That Petitioner-Cramer is not required to seek leave to join such new parties and that the court, of its own initiative, amy add such new parties. Rule 21. (FRCP)

12. Non-joinder is not jurisdictional, and the presence of Co-Defendant Federal Home Loan Bank Board is necessary to the granting of complete relief. Rule 21. (FRCP)

13. That Co-Defendants Federal Home Loan Bank Board, by Act of Congress, under Banks and Banking, 12 USCA 1461 et seq., promulgate the Code of Federal Regulations governing activities of lending institutions as to real estate loans and mortgages, and are a real party in interest.

14. That the matter cannot be dismissed without first assuming jurisdiction.

15. That any dismissal must be on the merits, and not for want of jurisdiction.

16. The court would have jurisdiction even though the Co-Defendant Federal Home Loan Bank Board may enjoy the status of liability-immunity.

17. The District Court may exercise its discretion as to jurisdictional statutory provisions.

WHEREFORE for the reasons above shown Co-Defendants Federal Home Loan Bank Board's motions to dismiss and remand should be denied.

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful
foreclosure

Dated:
Sept 20, 1979

BRIEF IN SUPPORT OF OBJECTIONS TO MOTION TO DISMISS POST-REMOVAL ADDITIONAL DEFENDANTS AND COMPLAINTS AND
OBJECTIONS TO MOTION TO REMAND ORIGINAL PROCEEDING

FACTS

The instant matter as "removed" did not include the Federal Home Loan Bank Board as a party to the State case. Petitioner-Cramer added said Federal Home Loan Bank as a separate and independent cause of action for federal jurisdiction. Said federal agency is an indispensable party as to the subject matter and does not involve any funds payable out of the United States Treasury Dept., as a liability. It does involve the Code of Federal Regulations composed and promulgated by a staff of approximately 35 lawyers in the Federal agency, the Federal Home Loan

Bank Board, located in Washington, D. C.

Said federal regulations are promulgated by authority under Act of Congress, 12 USCA 1461, et seq. and involve the commonly so-called "escrow" funds paid by mortgagors, as deposited with the banking and lending institutions, governed under federal law.

The subject matter is "escrow" funds as pertaining to a wrongful foreclosure, and the provisions in a mortgage contract on a real estate mortgage-loan.

Petitioner-Cramer did not file "two" complaints in the federal jurisdiction. The parties in the "removed" state case do not include the Federal Home Loan Bank Board. The Preamble and the several counts in the Complaint, together, are one complaint. (Mr. Samuel J. Behringer, Jr. is confused about "two" complaints, and it appears he is confused about several other matters, also.)

ARGUMENT

The attorney for the Federal Home Loan Bank Board has shown no reasons or grounds for Petitioner's pleadings to be stricken, and none are mentioned in his brief.

A motion to dismiss is not a responsive pleading, and Co-Defendants Federal Home Loan Bank Board filed no answer to the complaint.

A dismissal must be on the merits and not on a "motion to remand" where the Federal Home Loan Bank Board has no standing to motion for "remand."

Petitioner-Cramer is actually a defendant-mortgagor in a wrongful foreclosure, and has the right to "ex parte" removal.
28 USC 1441 et seq.

Rule 19. (FRCP)

Non-joinder is not jurisdictional. Warner v First National Bank, 23 FR Serv 264, 236 F2d 853 (CA 8th 1956). and the opportunity can be granted to join parties.

Rule 19 (a) (FRCP)

The remedy for non-joinder is joinder by the court, where justice requires. Rule 21. (FRCP)

12 USCA 1464

> "The question of whether a statute or administrative regulation permits maintenance of private cause of action turns on whether provision allegedly violated was designed to protect complainant from injuries of which it complains and whether implication of such cause of action is in furtherance of provision's purpose." City Federal Savings and Loan Assn. v Crowley, DC Wis 1975, 393 F Supp 644.

28 USCA 1337

This statute grants jurisdiction in civil actions arising under any act of Congress regulating commerce.

12 USCA 1464

> "Capital of federal savings and loan associations may only be raised through payments into so-called savings accounts plus earnings accredited thereto for which depositor acquires a share interest in capital of association equivalent to withdrawal value of the interest, and legal relationship resulting is not that of debtor and creditor, and his sole

claim against association is as a shareholder." Wisconsin Bankers Ass'n v Robertson, D.C.D.C. 1960, 190 F Supp 90, affirmed 294 F 2d 714, 111 US App D.C. 85, certiorari denied 82 S Ct 381, 368 US 938, 7 L Ed 2d 338, rehearing denied 82 S Ct 477, 368 US 979, 7 L Ed 2d 441.

Removal action under 28 USC 1441

Co-Defendant Federal Home Loan Bank Board has no standing to object to Petitioner's ex parte removal.

Co-Defendant Federal Home Loan Bank Board has not standing to object to the addition of parties, such as the Michigan Supreme Court.

Co-Defendant Federal Home Loan Bank Board has no standing to ask the Court to "dismiss" after removal, and "remand." Jurisdiction must be assumed first, (before and not after) for a matter to be possibly dismissed, then dismissal of the case would be on the merits, not for want of jurisdiction." Bell v Hood, 327 US 678; Swafford v Templeton, 185 US 487; Binderup v Pathe Exchange, 263 US 291

Also, Petitioner-Cramer incorporates by reference herein her pleadings and briefs in support, involving the similar questions of jurisdiction as to other Co-Defendant-parties named herein.

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful
foreclosure

Dated:
Sept 20, 1979

Filed September 26, 1979 No. 9-72789
U. S. District Court

MOTION TO CONSOLIDATE REMOVED ACTION NO. 62249 AND PRIOR ACTION NO. 57215 (STATE CASES) WITH INSTANT ACTION NO. 9-72789

Petitioner Virginia Cramer (defendant in wrongful foreclosure) in pro per respectfully moves this Honorable court for consolidation of removed State action No. 62249 (currently pending in the Michigan Supreme Court) and prior action No. 57215 (Wayne No. 115-792) reported at 401 Mich 252, with this instant action No. 9-72789 in the Federal District Court, for the following reasons:

1. That the instant removed action No. 62249 involves said prior action (Wayne 115-792) but is not a continuation of said prior action which was decided on October 6, 1977 and reported at 401 Mich 252.

2. That the instant action (No. 62249) on removal, was commenced in the Wayne Circuit Court on July 14, 1978, including petition to set aside a foreclosure; and Petitioner Virginia Cramer asserts that fraud has been perpetrated upon the Court and upon your Petitioner in said prior action No. 57215 and reported at 401 Mich 252.

3. That said prior action decision of October 6, 1977, reported at 401 Mich 252 is based on false facts, false reporting of procedure and involves attorney malpractice and misconduct, and involves the fraud and deceit of lawyers (on both sides).

4. That Petitioner herein asserts that it is necessary for the prior action No. 57215 and the instant removed action

No. 62249 be consolidated with the instant action No. 9-72789 for the reasons that there is a substantial and controlling common question of law or fact as to both actions.

5. That there is good and sufficient evidence in said prior action No. 57215 for your Petitioner to prove her allegations of fraud, deceit, concealment and attorney malpractice and misconduct, and to prove the assertions of false facts and false reporting of procedure, upon the consolidation of the two cases with the instant action, as aforementioned.

6. That, furthermore, it is necessary to consolidate the said two cases (on removal of state case) in the instant action in order for the court to grant the relief petitioner seeks, and to which she is entitled.

7. That Petitioner seeks relief from the "Order Dissolving Temporary Restraining Order" dated September 27, 1968, fraudulently entered into the court record in No. 57215 and reported at 401 Mich 252, to wit: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." -- which is false.

WHEREFORE your Petitioner Virginia Cramer (defendant in wrongful foreclosure) in pro per prays that this Honorable court grant consolidation of prior action No. 57215 (Wayne No. 115-792) and the removal of State case No. 62249 (currently pending in the Michigan Supreme Court) with the instant action CA 9-72789; and pursuant to the attached motions for writ of error coram non judice, and to set aside judgment for fraud in the obtaining thereof, incorporated

by reference herein.

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful
foreclosure

Dated:
Sept 20,1979

BRIEF IN SUPPORT OF MOTION TO CONSOLIDATE REMOVED ACTION NO. 62249 AND PRIOR ACTION NO. 57215 (STATE CASES) WITH INSTANT ACTION NO. 9-72789

Substantial and Controlling common Question of Law or Fact

Where there is an entire absence of proof on the material fact of finding mortgagor in "default" of her mortgage, that finding of "default" becomes erroneous as a matter of law.

ARGUMENT AND LAW

The consolidation of the two State cases (NO. 57215 and NO. 62249) on removal with the instant action No. 9-72789 should be perm itted on the assertion that the question is one of law.

> "Where defendant has complete defense to an action, consolidation with other cases does not deprive him of it." Brewster Loud Lumber Co. v General Builders Supply Co., 1926, 233 Mich 633, 208 NW 28.

Further, the facts are, as they occurred, pertaining to the prior action (No. 57215) and thus, there would be no impropriety in consolidation of the two State actions (No. 57215 and No. 62249) on removal of

said state case to the Federal District court and consolidation of same in the instant action.

> "The propriety of consolidation of actions is to be determined entirely by the state of facts existing prior to the consolidation."
> Hidgon v Kelley, 1954, 339 Mich 209, 63 NW2d 502.

> "Proceeding which is equivalent of common law suit or equitable action to secure relief from an existing judgment, is independent action and removable, regardless of whether or not proceeding sought to be removed is independent in form."
> Federal Savings & Loan Ins. Corp. v Quinn, C.A. Ill. 1969, 419 F 2d 1014

While the facts are the same in the instant action, your Petitioner (mortgagor-defendant in foreclosure action) has never been heard on said facts, and therefore, it may also be regarded as "a new case arising upon new facts" although being related to the validity of an actual judgment rendered (401 Mich 252) and in which "proceedings" your Petitioner-defendant in wrongful foreclosure has never been heard and never allowed to be heard, and Petitioner has never had her day in court on said wrongful foreclosure. Where there was no record made (in the State cases) as to a "finding that the plaintiff was in default", there is nothing to review. Therefore, this action constitutes an original and independent proceeding according to the doctrine laid down in Gaines v Fuentes (1a. 1876) 92 U.S. 10, 23 L Ed 524.

For the reasons above stated, Petitioner-Cramer's motion for consolidation should be granted.

Respectfully submitted,
/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful foreclosure

Dated:
Sept 20, 1979

Filed November 16, 1979 No. 9-72789
U. S. District Court

MOTION TO VOID, NULLIFY OR VACATE Wayne County Circuit Court Order dated September 27, 1968

Now comes Petitioner-Defendant in wrongful foreclosure (Virginia Cramer, in pro per) and moves this Honorable Federal district court to void, nullify or vacate Wayne County Circuit Court Order dated September 27, 1968, for the following reaons:

1. That your Petitioner herein previously motioned this court for consolidation of prior action (Wayne) 115-792 and which is reported at 401 Mich 252, with current action (Wayne) 78-822-879 CZ pending in the Michigan Supreme Court No. 62249, and on Petition for Removal of State case, wherein said motion for consolidation is pending in this Federal District Court.

2. That in said prior action (Wayne) 115-792, which involves legal malpractice, fraud, concealment and deceit of attorneys (on both sides) and where the Wayne Circuit Court forced your Petitioner to hire lawyers

and "Order Dissolving Temporary Restraining Order" alleging Petitioner-mortgagor in "default" of her mortgage, dated September 27, 1968, (see Exhibit A attached hereto) was fraudulently obtained by the attorneys for mortgagee-Metropolitan Federal Savings and Loan, without a proper hearing thereon.

3. That said "Order Dissolving Temporary Restraining Order" dated September 27, 1968, is erroneously made as a "court" order (entered by Thomas J. Murphy, Judge, deceased in 1969), in the absence of jurisdiction. (Exhibit A, attached hereto.)

4. That the complaint and affidavit as an application for temporary restraining order enjoining the said foreclosure with "Order to Show Cause Why A Preliminary Injunction Should Not Issue," dated August 12, 1968, by Plaintiff-Cramer in pro per, was insufficient to give jurisdiction and was entered "ex parte" so as not to allow counter-affidavits of the mortgagee-Metropolitan Federal Savings and Loan. (See Exhibit B, attached hereto.)

5. That the said "Order Dissolving Temporary Restraining Order" dated September 27, 1968, is not an order of the Court and fails to direct the Defendants (Metropolitan Federal Savings and Loan) to proceed with their foreclosure action under the supervision of the Court; that the jurisdiction of the court may not be invoked to enforce the provisions of an illegal contract; that an Order made by the Court without jurisdiction is void; and that a court order obtained upon a false allegation of "default in her mortgage" is a nullity.

6. That at the one and only hearing of September 6, 1968, where the Wayne Circuit

Court priorly would not allow Petitioner-Cramer to represent herself, and where she had hired attorney-Abel Selburn to manage said case and at said hearing which preceded the entry of said "Order Dissolving Temporary Restraining Order" dated September 27, 1968, there was neither evidence nor allegations to support any such finding or determination "that Plaintiff is in default on her Mortgage" and no "exhibits" were entered into the record at said one and only hearing of September 6, 1968.

7. There were no identifications in the record of any Exhibits, but which are fraudulently recited in said "Order Dissolving Temporary Restraining Order", to wit: "the Court having heard testimony and examined the Exhibits which have been filed", and no such "exhibits" were referred to or mentioned in the "testimony" so-called, and no "default" was shown or mentioned.

8. That prior to mortgagee's foreclosure action, mortgagee (Metropolitan) notified mortgagor-Virginia Cramer that her "escrow" account was adequate and increased the m ortgage-payment by $4.00 per month as indicated on the installment-payment-cards furnished by said mortgagee, from $150.00 to $154.00, total for principal, interest and "escrow", commencing for the March 1968 payment, and mortgagor-Cramer paid $245.04 for the said March 1968 payment.

9. That in April 1968, mortgagee-Metropolitan notified mortgagor-Cramer that her "escrow" account was again increased from $154.00 to $186.00 per month, total for principal, interest and "escrow" and by mortgagor's payment of $196.17, the mortgagee (Metropolitan) allocated the current April 1968 payment as follows: (See Exhibit H, attached hereto.)

Principal and interest	$103.81
Escrow	82.19
Additional principal	10.17
April 26, 1968, total	$196.17

10. That also on April 26, 1968, mortgagor-Cramer complained to mortgagee-Metropolitan that:

(a) Mortgagee mishandled the "escrow" funds and repeatedly failed to pay mortgagor's taxes and insurance when due, in 1963, 1964, 1965 and 1967.

(b) Mortgagee required excessive "escrow" funds to fatten their coffers and for self-dealing purposes, contrary to the mortgage covenant and agreement.

(c) Mortgagee failed and refused to furnish any kind of receipts or any kind of supporting advice as to their requirements for "escrow" as estimated by mortgagee and/or disbursements from the "escrow" account.

(d) Mortgagee refused to "release" mortgagor from the "escrow" clause of the mortgage covenant and agreement which requires the mortgagor to pay "escrow" funds "such sums to be held by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due." -- ani which said mortgage covenant and agreement restricts, inhibits, precludes, prevents and prohibits said mortgagor from paying said liabilities of taxes and insurance where said mortgagee fails and neglects to

pay said mortgagor's liabilities with said mortgagor's "escrow" funds.

(See Exhibit G, attached hereto, Mortgage covenant and agreement.)

11. That without prior notice, the mortgagee-Metropolitan prematurely exercised the power of sale (paragraph 8 of the mortgage covenant) and commenced Foreclosure by Advertisement under the provisions of MCLA 600.3201 et seq., MSA 27A. 3201 et seq., on/or about May 16, 1968, with the first insertion of publication dated May 23, 1968, and where by the terms of the Mortgage (promissory) note no penalty or late charge would be applicable until "after the 30th" or after May 30, 1968. (See Exhibit C attached hereto, Publication and Adjournment to October 1, 1968.)

(See Exhibit D, Mortgage (promissory) Note, attached hereto.)

12. The publication of "Notice of Mortgage Sale" dated May 23, 1968, states that "there is claimed to be due at the date of this notice, the sum of TWELVE THOUSAND FIVE HUNDRED NINETEEN AND 37/100 ($12,519.37) and an attorney's fee as provided for in said mortgage" where the actual principal balance indebtedness was $12,041.91 less "escrow" credit of $32.92, or actual indebtedness of $12,008.99.

13. That the mortgagor-Virginia Cramer never failed to pay "escrow" amounts in accordance with the mortgagee's estimates as shown and included in the total payment of principal, interest and "escrow" by the monthly-installment payment-cards for each and every month, during the entire history of said mortgage, said payment-cards as

furnished by said mortgagee to said mortgagor, prior to the foreclosure publication date of May 23, 1968.

14. That said mortgagee (Metropolitan) refused to accept mortgagor's payment made on May 29, 1968, "on account of the foreclosure," but never returned said mortgagor's check to her and which said check never cleared through mortgagor's checking account.

15. That the newspaper-clipping publication of "Notice of Mortgage Sale" dated May 23, 1968, was posted on the said property on May 31, 1968.

16. That mortgagee-Metropolitan refused, subsequently, to accept mortgagor's two (2) separate checks for June 1968 and July 1968 payments (on account of the foreclosure."

17. That in July, 1968, mortgagee returned said two (2) checks of mortgagor's timely payments, with the explanation that no moneys were acceptable "on account of the foreclosure."

18. That on/or about May 10, 1968, mortgagee-Metropolitan (by John C. Denyer) had telephoned mortgagor-Cramer requesting Cramer to pay over $400.00 in a lump sum for the "escrow" account, while at the same time, said John c. Denyer refused to furnish any kind of supporting advice in writing as to said oral request for payment, and as disputed by mortgagor-Cramer.

19. Subsequent to the publication posting date of May 31, 1968, where the first insertion was published on May 23, 1968, mortgagee alleged a "shortage of requirements" in the "escrow" account, as follows:

"As of May 10 (1968) Metro needs:

6 months County Tax at 37.57	$225.42
11 months City Tax at 7.47	82.17
24 months Hazard Ins. at 4.00	96.00
11 months M.G.I.C. Ins. at 2.76	30.36
	$433.95
Less Credit balance in "escrow"	32.92
Shortage of requirements	$401.03 "

20. That mortgagor-Cramer commenced the prior action (Wayne) No. 115-792 attempting to stop the foreclosure proceedings where said mortgagee-Metropolitan was refusing to accept any moneys from Cramer "on account of the foreclosure."

21. That said prior action (Wayne) No. 115-792 was filed on August 12, 1968, and during the pendency of "proceedings" in the Wayne County Circuit Court where said mortgagee published at least six (6) week-to-week adjournments of the mortgage sale through and including October 1, 1968, mortgagee-Metropolitan revised the "escrow" figures, as follows:

"As of Sept. 6th (1968) Metro needs:

10 months County Tax at 37.57	$375.70
3 months M.G.I.C. at 2.51	7.53
3 months City Tax at 7.47	22.41
28 months Hazard Ins. at 4.00	112.00
	$517.64
(Credit) Balance in escrow	2.82
Shortage of Requirements	$514.82
As of 9-6-68 (less, credit)	100.00
	$414.82 "

(See Exhibit K, attached hereto)

22. That mortgagor-Cramer had hired attorney-Abel Selburn on/or about August 23, 1968, upon the court's insistence, and said attorney filed no pleadings in said case, although he had deceived client-Cramer and had claimed that he had prepared and filed pleadings; said attorney-Selburn also appeared in court on September 6, 1968, on behalf of client-Cramer and where entry of "Order Dissolving Temporary Restraining Order", alleging mortgagor-Cramer to be in "default" of her mortgage, was noticed for hearing on September 27, 1968, attorney-Abel Selburn failed and neglected to appear on said September 27, 1968.

23. That mortgagee-Metropolitan and their attorneys sold the property to themselves by Sheriff's sale, on October 1, 1968, where the Sheriff's Bidding Statement showed no deficiency in the "escrow" account and instead showed an "escrow" credit balance which the mortgagee applied in reduction of t he principal balance. (See Exhibit E and J, attached hereto.)

24. That the current and timely payment for April 1968 made by mortgagor-Virginia Cramer on April 26, 1968, and as allocated by said mortgagee (Metropolitan) resulted in a credit "escrow" balance of $32.92, and of which $30.10 was received by Mortgage Guaranty Insurance Corporation, Milwaukee, Wisconsin, in December 1968, approximately two (2) months after the Sheriff's Sale of October 1, 1968.

25. That the "escrow" credit balance on the Sheriff's Bidding Statement dated October 1, 1968, should have been $32.92 instead of $2.82. (See Exhibit E, attached hereto.)

26. That while mortgagee (Metropolitan) required mortgagor to pay "escrow" funds for future liabilities of taxes and insur-

ances as assessed on said real property, said mortgagee also required payment of mortgage insurance premiums, contrary to the provisions of the Code of Federal Regulations on real estate loans, under Title 12, section 545.6-1 et seq., promulgated by the Federal Home Loan Bank Board, Washington, D.C., where said federal regulations do not require "escrow" on any insured or guaranteed residence mortgage loan.

27. That while mortgagor was disputing the "excessive amounts of "escrow" required by said Mortgagee (Metropolitan) the attorneys for mortgagee-Metropolitan abusively utilized the Foreclosure by Advertisement Statute, MCLA 600.3201 et seq.; MSA 27A. 3201 et seq., and the power of sale in the mortgage contract, in perversion of such power, and foreclosed the mortgage loan to accelerate the payment of mortgagor's own moneys for the "escrow" account for future liabilities of taxes and insurance, while there was a surplus credit balance in said "escrow" account and nothing was due and nothing was unpaid, and during the 15-day forebearance or waiver period of the Mortgage (promissory) Note, without notice.

28. That the mortgagee-Metropolitan and their attorneys utilized the power of sale and the Foreclosure by Advertisement Statute to operate their extortion "racket" for collection of "escrow" moneys to fatten their coffers and for self-dealing purposes, and where no taxes or insurance were due; nothing was billed and nothing was unpaid.

29. That the mortgagee had fraudulently claimed an "escrow" deficiency of $401.03 as of May 10, 1968, when there was actually a credit balance in said mortgagor's "escrow" account.

30. That the entire "foreclosure" incident or occurrance was a fraud perpetrated upon mortgagor-Cramer and a fraud perpetrated upon the court, in perversion of the power of sale contained in the mortgage contract and in perversion of the Foreclosure by Advertisement statute, MCLA 600.3201 et seq.; MSA 27A.3201 et seq., and where mortgagor-Cramer was not in default of said mortgage contract, and where mortgagor-Cramer had paid "escrow" moneys to mortgagee each and every month without fail by the monthly-installment-payment cards furnished to said mortgagor by mortgagee; that also mortgagor-Cramer had paid other sums of "escrow" moneys to said mortgagee-Metropolitan separate and apart from the monthly-installments.

31. That if mortgagor-Cramer had paid said "shortage of requirements of $401.03 as of 5-10-68" the following would have resulted, where obviously said mortgagee-Metropolitan utilized the Foreclosure by advertisement Statute and the power of sale in the mortgage contract, by perversion and to extort excessive amounts of "escrow" for self-dealing purposes:

		Escrow Balance
As of April 19, 1968, "escrow" requirements increased to $82.19 per month, and principal, interest and "escrow" total payment of $186.00, which mortgagor paid $196.17 on April 26, 1968, and which mortgagee allocated as:		
Principal and interest	$103.81	
Escrow	82.19	
Mortgage payment	$186.00	
Additional Princ. Pymt.	10.17	$ 32.92

(See Exhibit H attached)

By payment cards at $82.19 per month for "escrow" for May through December 1968, 8 months at $82.19		657.92
Additional $401.03 "required" for "escrow" as of May 10, 1968		401.03
		$1,091.47
Obligations to be paid in 1968 from "escrow":		
July 1968 City Tax	$101.33	
August 1968 MGIC Ins.	30.10	
Dec. 1968 County Tax	491.09	622.52
Excessive "escrow" required by Metropolitan by foreclosure proceedings of May 23, 1968		$ 468.95

32. That mortgagor-Cramer refused to pay "escrow" after the said publication of Notice of Mortgage Sale dated May 23, 1968, by her check dated and paid to mortgagee-Metropolitan on May 29, 1968, for the current and timely May 1968 installment payment for principal and interest in the amount of $103.81, and where, by the terms of the Mortgage (promissory) Note, no penalty or no late charges were applicable.

33. That after the entry of "Order Dissolving Temporary Restraining Order" dated September 27, 1968, and the Sheriff's Sale of October 1, 1968, the attorneys for mortgagee-Metropolitan constantly claimed "res judicata" and where, by the fraud and deceit and legal malpractice of the attorneys (on both sides) and where the attorneys hired by mortgagor-Cramer, by concealment of fraud and legal malpractice, failed and neglected to take issue with said fraudulently entered "Order Dissolving Temporary Restraining Order" dated September 27, 1968, and depriving mortgagor-Cramer of the benefits of due process.

34. That the Michigan Supreme Court decision reported at 401 Mich 252, in further deprivation of the benefits of due process, shows said same Order dated September 27, 1968, as "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default."

35. There were no findings of fact and mortgagor-Cramer was not permitted to be heard. The said "Order Dissolving Temporary Restraining Order" dated September 27, 1968, entered by Thomas J. Murphy, J., is not a judgment and there were no exhibits entered in the court record, and no "default" was shown.

WHEREFORE Defendant-mortgagor-Virginia Cramer, Petitioner in pro per herein, demands that this Honorable court enter its Order voiding, nullifying and/or vacating Wayne County Circuit Court "Order Dissolving Temporary Restraining Order" dated September 27, 1968, as entered in prior action (Wayne) No. 115-792 in the absence of jurisdiction, and reported falsely in Michigan Supreme Court decision dated October 6, 1977, at 401 Mich 252, as a "judgment."

/s/ Virginia Cramer,
Petitioner in pro per
Defendant in wrongful
foreclosure

Dated:
Nov 12, 1979

See Volume 2 of 2 following herewith.

Supreme Court, U. S.
FILED
AUG - 4 1980
MICHAEL RODAK, JR., CLERK

NO. 80-250

PETITION FOR CERTIORARI

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

VIRGINIA CRAMER, PETITIONER-DEFENDANT IN WRONGFUL FORECLOSURE ACTION,

PETITIONER

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, JOINTLY, SEVERALLY AND INDIVIDUALLY, PLAINTIFFS IN WRONGFUL FORECLOSURE ACTION,

McCLINTOCK DONOVAN CARSON & ROACH AND JAMES I. McCLINTOCK, MICHAEL DOELLE AND WILLIAM P. THORPE, ATTORNEYS AT LAW, JOINTLY, SEVERALLY AND INDIVIDUALLY,

ABEL SELBURN, ALLEN COUNARD AND WILLIAM R. McFADDEN, ATTORNEYS AT LAW, JOINTLY, SEVERALLY, AND INDIVIDUALLY,

FEDERAL HOME LOAN BANK BOARD, DIRECTOR AND/OR OFFICIAL AND/OR OFFICER IN CHARGE,

MICHIGAN SUPREME COURT MEMBERS, JUSTICES MARY S. COLEMAN, THOMAS GILES KAVANAGH, CHARLES L. LEVIN, JOHN W. FITZGERALD, JAMES L. RYAN, BLAIR MOODY, JR., and G. MENNEN WILLIAMS, JOINTLY, SEVERALLY AND INDIVIDUALLY,

RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ~~AND TO THE MICHIGAN SUPREME COURT~~

Virginia Cramer, pro se Petitioner
27314 Clairview, Dearborn Heights, Mich. 48127
Telephone: (313) 278-7286

PETITIONER'S APPENDIX VOLUME II

Filed November 16, 1979 No. 9-72789
U. S. District Court

EXHIBITS (attached hereto)

A - "Order Dissolving Temporary Restraining Order" dated September 27, 1968

B - Affidavit of John C. Denyer (for Metropolitan Federal Savings and Loan Association

C - Notice of Adjournment and Notice of Mortgage Sale

D - Mortgage (promissory) Note

E - Sheriff's Bidding Statement of Sheriff's Sale on October 1, 1968

G - Mortgage Covenant and Agreement

H - Letter dated May 6, 1968, re: Mortgage payment credited on April 30, 1968

J - Sheriff's Indenture on Mortgage foreclosure

K - Metropolitan Memo as of September 6, 1968

EXHIBIT A

State of Michigan, In the Circuit Court for the County of Wayne - No. 115 792

Virginia Cramer, Plaintiff vs Metropolitan Federal Savings and Loan Association, a United States corporation, et al.

ORDER DISSOLVING TEMPORARY RESTRAINING ORDER

At a session of said Court held in the Court Room in the City-County Building in the City of Detroit, on the day of September 27, 1968.

PRESENT: The Honorable Thomas J. Murphy, Circuit Judge

This matter having come on to be heard on Plaintiff's Motion for Order to Show Cause why a preliminary injunction should not issue, the Court having previously entered a Temporary Restraining Order in this matter, and the Court having examined the pleadings which have been filed, and the Court having heard testimony and examined the Exhibits which have been filed and heard oral argument by the attorneys representing both parties, and the Court having determined that Plaintiff is in default on her Mortgage, and the Court being fuly (sic) advised in the premises, now therefore,

IT IS HEREBY ORDERED AND ADJUDGED that the Temporary Restraining Order previously entered by the Court in this matter restraining the Def endants from proceeding with foreclosure on the following described property:

East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 of Part of the SW 1/4 of Sec. 6, T2SR10E, Dearborn Township WCM as recorded in L80 P2 Wayne County Records

be and the same hereby is dissolved, set aside and held for naught, and the Defendants are hereby permitted to proceed with their foreclosure action on the above described property.

Thomas J. Murphy
Circuit Judge

State of Michigan, In the Circuit Court for the County of Wayne, No. 115 792

Virginia Cramer, Plaintiff vs. Metropolitan Federal Savings and Loan Association, a United States corporation, et al

ORDER TO SHOW CAUSE WHY A PRELIMINARY INJUNCTION SHOULD NOT ISSUE, WITH TEMPORARY RESTRAINING ORDER - August 12, 1968

The complaint of the plaintiff in the above entitled action, praying a preliminary order of injunction therein, together with a temporary restraining order until such time as it may be determined whether said preliminary order of injunction should issue, having been considered by the court, and the court being fully informed in the premises,

IT IS ORDERED that the defendants show cause before this court on Friday, August 16, 1968, at 11:00 A.M. O'clock why a preliminary order of injunction should not be issued as prayed in said complaint.

IT IS FURTHER ORDERED that a certified copy of said complaint and of this order be served on defendants at least four (4) days before the time fixed for showing cause, and that proof of such service be made.

IT IS FURTHER ORDERED that IN THE MEANWHILE AND UNTIL THE FURTHER ORDER OF THIS COURT, the said defendants, his agents, employees and attorneys, be and they hereby are restrained and enjoined from pursuing a mortgage sale and/or foreclosure action on property described as:

East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 of Part of the SW 1/4 of Sec. 6, T2SR10E, Dearborn Township WCM as recorded

in L80 P2 Wayne County Records,

and also known as 27314 Clairview Drive, Dearborn Heights, Wayne County, Michigan.

Thomas J. Murphy
Circuit Court Judge

EXHIBIT B
State of Michigan, In the Circuit Court for the County of Wayne - No. 115 792

Virginia Cramer, Plaintiff vs Metropolitan Federal Savings and Loan Association, a United States corporation, et al

AFFIDAVIT OF JOHN C. DENYER

STATE OF MICHIGAN)
) SS.
COUNTY OF WAYNE)

JOHN C. DENYER, being duly sworn, deposes and says as follows:

1. That he is Assistant Vice-President and Loan Servicing Manager of Metropolitan Federal Savings and Loan Association, Defendant in the above matter.

2. That in this connection he has been personally and primarily responsible for handling this Mortgage loan from and after the time when the Mortgage was executed.

3. That in this connection he has examined all of the transactions which have taken place in this loan from the time when it was made.

4. That the amounts which Metropolitan Federal Savings and Loan Association is requiring from the Plaintiff as payments into her escrow fund have been correctly

computed by means of a formula which is accepted and used by all other lending institutions in this country.

5. That every payment which has been made out of the funds in Plaintiff's escrow account has been proper and correct.

6. That no penalty has ever been assessed against Plaintiff's escrow account for the late payment of any property tax on this property, but rather any such penalties that have been incurred have been paid by the Defendant.

7. That the title to and the insurance on this property have never been placed in jeopardy by anything which this Defendant has done or failed to do.

8. That the Defendant has requested of the Plaintiff that she make certain increased and additional payments into her escrow fund in order to cover the cost of increased property taxes on this property, and that the Plaintiff has failed and refused to do so.

9. That the Defendant has at all times attempted to co-operate with the Plaintiff and to furnish the Plaintiff with all such information and records as she required in order to enable her to understand the necessity for the increased payments into her escrow fund.

10. That attached hereto and made a part hereof as an exhibit are the year end statements for this mortgage loan showing all receipts and disbursements from the escrow account.

Further deponent saith not.

/s/ John C. Denyer

Subscribed and sworn to before me this 22nd day of August, 1968. Notary Public, Wayne County, Michigan, Betty G. Bell.

EXHIBIT C

NOTICE OF ADJOURNMENT L116503 PA 41

Notice of hereby given that the MORTGAGE FORECLOSURE SALE of which notice hereby attached, is hereby, for reasonable cause, adjourned to Oct. 1st, 1968 at 12 O'clock noon at the same place as set forth in the attached notice.

/s/ Roman S. Gribbs
Sheriff, Wayne County, Mich.

By: /s/ Casimir M. Senkowski, Deputy

I, Casimir M. Senkowski, Deputy Sheriff, do hereby certify that at 12 o"clock noon on Sept. 24th, 1968, I adjourned the Mortgage Foreclosure Sale of which notice is hereby attached, to 12 noon, on October 1st, 1968, at the same place, by posting the above notice of adjournment on the Bulletin Board at the Jefferson Avenue entrance to the City-County Building, Detroit, Michigan.

/s/ Casimir M. Senkowski, Deputy Sheriff, Wayne County, Michigan.

McCLINTOCK, FULTON, DONOVAN & WATERMAN, Attys., 2150 Guardian Bldg., Detroit, Michigan 48226

No. 01-04-6326

NOTICE OF MOR TGAGE SALE- Default having been made in the conditions of a certain mortgage made by VIRGINIA CRAMER to METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States Corporation dated the 29th day of July, 1963, and recorded in the office of the Register of Deeds for the County of Wayne and State of Michigan, on the 13th day of August, 1963, in Liber 15124, of Wayne

County Records, on page 270, on which mortgage there is claimed to be due at the date of this notice, the sum of TWELVE THOUSAND FIVE HUNDRED NINETEEN AND 37/100 ($12,519.37) DOLLARS, and an attorney's fee as provided for in said mortgage, and no suit or proceedings at law having been instituted to recover the moneys secured by said mortgage, or any part thereof,

NOTICE IS HEREBY GIVEN, that by virtue of the power of sale contained in said mortgage, and the statute in such case made and provided, on TUESDAY, THE 20TH DAY OF AUGUST, 1968, at twelve o'clock noon, Local Time, the undersigned will, at the Southerly or Jefferson Avenue entrance to the City-County Building, in the City of Detroit, Michigan, that being the place where the Circuit Court for the County of Wayne is held, sell at public auction, the premises described in said mortgage, or so much thereof as may be necessary to pay the amount then due on said mortgage, including legal costs and attorney's fees, and taxes or insurance that the undersigned may pay on or prior to the date of said sale, and interest at 7 per cent per annum thereon, which said premises so to be sold are situated in the City of Dearborn Heights, County of Wayne, Michigan, and are described as:

East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 Of Part Of The SW 1/4 Of Sec. 6, T2SR10E, Dearborn Township WCM As Recorded in L80 P2 Wayne County Records.

The redemption period as determined under Stat. Ann. 27A.3240 is one year from the time of such sale.

Dated May 23, 1968

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation,
Mortgagee

McCLINTOCK, FULTON, DONOVAN & WATERMAN,
Attorneys for Mortgagee, 2150 Guardian Bldg.,
Detroit, Michigan 48226

EXHIBIT D

MORTGAGE NOTE - Loan No. 6326-MG
METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION

$16,500.00 Detroit, Michigan, July 29,196

FOR VALUE RECEIVED, the undersigned, jointly and severally, promise(s) to pay Metropolitan Federal Savings & Loan Association, or order, at its office in the City of Detroit, Michigan, the principal sum of Sixteen Thousand Five Hundred and No/100 Dollars ($16,500.00) with interest from date on any part thereof at any time unpaid at the rate of 5 & 3/4 per centum (Five & 3/4%) per annum while there is no default hereunder, or under the mortgage securing this note, and at the rate of seven per centum (7%) per annum during the period of any such default, as follows:

One Hundred Three and 81/100 Dollars ($103.8 on the 15th day of September, 1963, and a li sum on the 15th day of each calendar month thereafter until the entire indebtedness secured hereby has been paid in full.

In the event of default in any promise made in this note, or in the mortgage securing it, the holder of this note and said mortgage may, without notice, at its option declare the entire indebtedness evidenced and secured thereby due and payable, then or thereafter, as said holder may elect, regardless of the date of maturity.

Protest, presentment, demand and notice of non-payment are hereby waived by every signor or endorser hereof.

The monthly payments herein provided for shall be applied first upon interest and the remainder upon principal.

Privilege is reserved to prepay, without premium or fee, the indebtedness in whole, or in an amount equal to one or more monthly payments on the principal that are next due on this note, on the 15th day of any month prior to maturity, provided that the monthly payment due on the said 15th day of the month shall have been paid.

At its option, in lieu of increasing the rate of interest as above provided during the period of any default, the Association may collect a "late Charge" not to exceed an amount equal to four per centum (4%) of any installment which is not paid within fifteen (15) days from the due date thereof, to cover the extra expense involved in handling delinquent payments.

/s/ Virginia Cramer (L.S.)

This is to certify that this is the note described in and secured by mortgage of even date herewith and in the same principal amount as herein stated, and secured by real estate situated in Wayne County, State of Michigan.

Dated July 29, 1963 /s/ Edward J. Gilroy
Notary Public

EXHIBIT E

MC CLINTOCK, FULTON, DONOVAN & WATERMAN
2150 Guardian Building Detroit, Michigan 48226

BIDDING STATEMENT FOR SHERIFF'S SALE

Loan No: 01-04-6326
Bidder: Metropolitan Federal Savings and Loan Association
Mortgagors: Virginia Cramer
Type of Loan: V.A. F.H.A. Conventional XX

Principal balance	$12,041.91
Less (Plus) escrow balance (overdraft)	-2.82
Net balance	$12,039.09
Interest to date of notice of sale, ~~excluding escrow~~, at 7%, 5-15-68 to 5-23-68 (___ months, 8 days~~,~~ at $2.34 per day) (sic, 5-3/4% - $2.34 per day)	19.73
Interest from date of notice of sale to date of ~~sale~~, excluding escrow, at 7%, 5-23-68 to 10-1-68 4 months 8 days, at $2.419 per day)	299.64

Other charges:

Late Charges (if applicable):

Cost of Foreclosure:

Foreclosure report	$
Posting fee	8.00
Recording fee	11.00
Attorney's fee	75.00
Sheriff's fee	16.00
Publication costs	72.00
Other	
Revenue stamps	14.30
Total Costs	$196.30

Advances, if any:

_____ tax paid on _____ Plus interest at _____% to date of sale ____ months, ____ days at $_____)

_____ insurance premium paid _____ Plus interest at _____% to date of sale _____ months, _____ days at $_____)

Total advances and interest none

Total Due At Date of Sale $12,611.46

UPSET PRICE $_____

EXHIBIT G

THIS MORTGAGE, made this 29th day of July, 1963 between Virginia Cramer of the City of Detroit, County of Wayne, Michigan, mortgagor, and METROPOLITAN FEDERAL SAVINGS AND LOAN ASOCIATION, a corporation existing under the Home Owner's Loan Act of 1933 of the United States of America, Mortgagee:

WITNESSETH: That mortgagor, for and in consideration of the sum of Sixteen Thousand Five Hundred and No/100 dollars ($16,500.00), the receipt whereof is hereby acknowledged, and for the purpose of securing the re-paymant of said sum, with interest, as hereinafter provided, and any additional sums which mortgagor (jointly or severally, if more than one joins herein) may now or hereafter owe mortgagee, for which this mortgage shall be a continuing security, and of securing the performance of the covenants and conditions hereafter contained, hereby mortgages and warrants unto mortgagee the premises situated in the City of Dearborn Heights, County of Wayne, Michigan, described as follows:

East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 Of Part Of The SW 1/4 of Sec. 6, T2SR10E, Dearborn Township WCM As Recorded In L80 P2 Wayne County Records.

Recorded: Aug 13, 1963 at
10:05 O'clock AM
BERNARD J. YOUNGBLOOD,
Register of Deeds
Wayne County 26, Michigan

together with all easements and rights of way now or hereafter used in connection therewith and all fixtures (which shall include all articles that are ever furnished by a landlord in letting or operating an

unfurnished building which are now or shall hereafter be attached to said premises in any manner).

Mortgagor covenants and agrees:

1. To pay to mortgagee at its office in the City of Detroit, Michigan, the principal sum of Sixteen Thousand Five Hundred and No/100 dollars, ($16,500.00), with interest thereon, according to the terms of a promissory note bearing even date herewith executed by mortgagor to mortgagee, which matures on the 15th day of August 1988, and to pay when due any additional sums which mortgagor may now or hereafter owe mortgagee, as aforesaid.

2. In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay to mortgagee an installment of the taxes and assessments levied or to be levied against said premises, that will next become due, an installment of the premium or premiums that will next become due to renew the insurance on said premises (as hereinafter provided) and, if any life insurance is payable or assigned to mortgagee as additional security for said indebtedness, an installment of the premium or premiums that will next become due thereon. The said installments shall be equal, respectively, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be held by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single

payment. If the sums so deposited shall not be sufficient to pay the taxes, assessments and premiums when the same become due, mortgagor agrees to forthwith pay to mortgagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefor, the excess shall be credited upon principal.

3, To keep all insurable property covered hereby insured against loss by fire and such other hazards as may be specified by mortgagee from time to time, in such amounts and for such periods as may be required by mortgagee, and to pay when due all premiums on any such insurance in the manner above provided. All insurance shall be carried in companies approved by mortgagee and the policies and renewals thereof shall be held by mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to mortgagee. Each insurance company concerned is hereby directed to make payment for such loss to mortgagee only, and the insurance proceeds, or any part thereof, may be applied by it upon any indebtedness secured hereby or to the restoration or repair of the property damaged, at its option, and any surplus shall be paid to mortgagor.

4. To pay when due all taxes, assessments and other charges which are now or shall hereafter be a lien against said premises, or any part thereof, and for which provision has not been made hereinbefore.

5. To keep all property covered hereby in good repair and condition, to comply promptly with all laws, ordinances, regulations or requirements of any governmental authority applicable thereto, and to abstain from the commission of waste.

6. Should any default be made in the covenants or conditions hereof, mortgagee may, without demand or notice, pay any taxes, assessments, premiums or liens required to be paid by mortgagor, make repairs, effect any insurance provided for herein, cause the abstract of title and tax histories of said premises to be certified to date or procure new abstracts of title and tax histories in case none were furnished to it and procure title reports covering said premises, and the sums paid for any one or all of said purposes shall from the time of the payment thereof be due, with interest thereon at the rate of seven per centum (7%) per annum, and shall constitute a further lien upon said premises under this mortgage. In the event of foreclosure the abstract or abstracts of title shall become the property of mortgagee.

7. The failure of mortgagor to pay any taxes or assessments levied against said premises, or any insurance premiums upon policies of insurance covering said premises, in accordance with the terms hereof, shall constitute waste.

8. In the event of default in the payment of said indebtedness, or any part thereof, or in the performance of any of the covenants or conditions hereof, mortgagee may, without notice, at its option, declare the entire indebtedness secured hereby due, then or thereafter, as it may elect, regardless of the date of maturity and is hereby authorized and empowered to sell or cause to be sold said premises, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder, and all costs and charges of the sale (including the attorneys' fee provided by statute), rendering any surplus moneys to mortgagor. The commencement of proceedings to foreclose this mortgage in any manner authorized by law

shall be deemed an exercise of the above option.

9. The covenants and conditions hereof shall bind, and the benefits and advantages thereof shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, this mortgage has been signed and sealed by mortgagor.

Signed, sealed and delivered
in the presence of:

/s/ Frank E. Fike /s/ Virginia Cramer (L.S.)

/s/ Edward J. Gilroy

STATE OF MICHIGAN)
} SS.
COUNTY OF WAYNE)

On this 29th day of July, 1963, before me personally appeared Virginia Cramer to me known to be the persons described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

My commission expires: 3-12-66

/s/ Edward J. Gilroy
Notary Public, Wayne
County, Michigan

STATE OF MICHIGAN)
} SS
COUNTY OF

On this _____ day of _____, 19 ___ before me appeared _____ and _____ to me personally known, who, being by me (severally and) duly

sworn did say that he is (they are respectively) _____ and _____ of _____ (and that the seal affixed to said instrument is the corporate seal of said corporation) and that the said instrument was signed and sealed in behalf of said corporation by authority of its Board of said Directors; and the said officer(s) acknowledged the said instrument to be the free act and deed of said corporation.

My Commission expires _____ 19 __

_____

Notary Public _____ County, Michigan

EXHIBIT H

METROPOLITAN FEDERAL SAVINGS
19830 West Seven Mile at Evergreen - Detroit, Michigan 48219 - Phone 537-3400

May 6, 1968

Virginia Cramer
27314 Clairview
Dearborn Heights, Michigan

Re: 01-03-6326 (sic)

Dear Miss Cramer:
We received a mortgage payment from you on April 30, 1968. It was credited to your account in the following matter: (sic)

Mortgage Payment:	$186.00
Additional Principal Payment	10.17

Very truly yours,

/s/ John C. Denyer
Loan Servicing Manager

JCD:lk

EXHIBIT J

F324199 Li 16503 PA 36

THIS INDENTURE Made the 1st day of October - in the year one thousand nine hundred sixty-eight

BETWEEN Louis W. Anschultz Deputy Sheriff, in and for the County of Wayne in the State - of Michigan, Grantor, and Metropolitan Federal Savings and Loan Association, a United States corporation,

hereinafter referred to as the Grantee.

WITNESSETH, That Virginia Cramer executed and delivered a certain MORTGAGE to- Metropolitan Federal Savings and Loan Association, a United States corporation, - which was recorded in the office of the Register of Deeds for the County of Wayne in Liber 15124 of Wayne County Records on page 270

State of MICHIGAN Dept. of Taxation	Real Estate Transfer Tax Oct. 2'68 P.B. 10543 14.30

which said mortgage contained a power of sale, which has become operative by reason of a default in the covenants of said mortgage, and, by virtue of said power of sale, and in pursuance of the statute in such case made and provided, no proceedings at law having been instituted to recover the debt secured by said mortgage or any part thereof, a notice was published, and a copy thereof posted in a conspicuous place upon the mortgaged premises, that the premises described in said notice would be sold on the 20th day of August in the year one thousand nine hundred sixty-eight at the Southerly or Jefferson Avenue entrance to the City-County Building in the City of Detroit, Michigan, that being the place of holding the Circuit Court in Wayne

County, where the premises are situated, and which sale was adjourned from week to week to October 1, 1968, all as appears from the affidavits and certificates hereto attached, and, in pursuance of said notice I did on the 1st day of October—in the year one thousand nine hundred sixty-eight at 12 O'clock noon of said day expose for sale, at Public Vendue, the lands and tenements described in said notice, and at such sale—did strike off and sell the lands and tenements to the Grantee for the sum of:
TWELVE THOUSAND SIX HUNDRED ELEVEN AND 46/100 ($12,611.46) DOLLARS
being the highest bid therefor and Grantee being the highest bidder, which premises so sold are situated in the City of Dearborn Heights, County of Wayne, State of Michigan and described as:

East 33 feet of Lot—5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 of Part of The SW 1/4 of Sec. 6, T2SR10E, Dearborn Township WCM As Recorded In L80 P2 Wayne County Records.

Recorded Oct 2, 1968 at 2:40 o'clock PM BERNARD J. YOUNGBLOOD, Register of Deeds Wayne County, Michigan 48226

Now, this Indenture Witnesseth, That I, the Deputy Sheriff aforesaid, by virtue of the power of sale in said mortgage contained, and in pursuance of the statute in such case made and provided, and in consideration of the said sum of money so paid as aforesaid, have granted, conveyed, bargained and sold, and by this deed to grant, convey, bargain and sell unto Grantee and to the heirs, successors and assigns of Grantee, — forever, all said lands and tenements hereinbefore described, with the appurtenances and all the estate, right, title and interest

which the said Mortgagors had in said lands and tenements, and every part thereof, on the 29th day of July in the year one thousand nine hundred Sixty-three, that being the date of said mortgage; and at any time thereafter, to Have and to Hold said lands and tenements and every part thereof to Grantee and to the heirs, successors and assigns of Grantee forever.

Signed, Sealed and Delivered, the day and year first above written.

In Presence of

/s/ Louis W. Anschultz
Deputy Sheriff in and for the County of Wayne

/s/ Mary T. Topalov
/s/ Geneva Sparks

14.30

STATE OF MICHIGAN) SS.
COUNTY OF WAYNE)

On this 1st day of October, 1968 before me, the subscriber, a Notary Public in and for said County, came Louis W. Anschultz, a Deputy Sheriff of said County, known to be to be the individual described in and who executed the above conveyance, and acknowledged that he executed the same as his free act and deed as such Deputy Sheriff.

/s/ Elizabeth Sanzion
Notary Public, Wayne County, Mich.
My commisssion expires: Jun 19 1972

(AFFIDAVIT OF POSTING)
STATE OF MICHIGAN)
COUNTY OF WAYNE) SS.

Daniel M. King being duly sworn, deposes and says that on the 31st day of May, 1968, he posted a true copy of the Notice annexed to the affidavit of publication hereto attached in a conspicuous place upon the premises

described in said Notice by attaching the same in a secure manner to The fron (sic) door frame of the dwelling house situated on said premises.

/s/ Daniel N. King

Subscribed and sworn to before me this 5th day of June, 1968.

/s/ Rose Barkoff
Notary Public, Wayne County, Mich
My commission expires:
October 21, 1969

(AFFIDAVIT OF AUCTIONEER)
STATE OF MICHIGAN)
COUNTY OF WAYNE) SS.

Louis W. Anschultz being duly sworn, deposes and says that he is a Deputy Sheriff of said County of Wayne; that he acted as Auctioneer and made the sale as described in the annexed Deed pursuant to the foregoing printed notice and certificates; that the sale was opened at 12 o'clock noon of the 1st day of October, 1968, at the Southerly or Jefferson Avenue entrance to the City-County Building in the City of Detroit, Michigan, that being the place of holding the Circuit Court in the said County of Wayne, and was kept open for one hour; that the highest bid for the premises described in the annexed deed was the sum of TWELVE THOUSAND SIX HUNDRED ELEVEN AND 46/100 ($12,611.46) DOLLARS made by METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation,

the Grantee in the annexed Deed; that the sale was in all respects open and fair; and that he did strike off and sell the said premises to the said Grantee, who purchased the said premises faily, and in good faith, as deponent varily believes.

/s/ Louis W. Anschultz

Subscribed and sworn to before me this 1st day of October, 1968. /s/ Elizabeth Sanzion
Notary Public

STATE OF MICHIGAN)
COUNTY OF WAYNE) SS.

I do hereby certify, that the within Sheriff's Deed will become operative at the expiration of one year from the 1st day of October, 1968, unless otherwise redeemed according to law, in such case made and provided.

/s/ Louis W. Anschultz
Deputy Sheriff

F 324199
SHERIFF'S DEED on MORTGAGE SALE
VIRGINIA CRAMER
By Louis W. Anschultz, Deputy Sheriff

TO
METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation

ORIGINAL 234 236

EXHIBIT K

As of Sept 6th (1968) Metro needs:

10 months	County Tax at 37.57	375.70
3 months	M.G.I.C. at 2.51	7.53
3 months	City Tax at 7.47	22.41
28 months	Hazard Ins. at 4.00	112.00
		517.64
	Balance in Escrow	- 2.82
		514.82
	As of 9-6-68	100.00
		414.82

Filed November 16, 1979 - No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF MOTION TO VOID, NULLIFY AND/OR VACATE Wayne County Circuit Court "Order Dissolving Temporary Restraining Order" dated September 27, 1968, entered in prior action (Wayne) No. 115-792, and reported in DEFECTIVE DECISION 401 Mich 252.

FACTS

On July 29, 1963, Petitioner-Cramer obtained a mortgage loan from Metropolitan Federal Savings and Loan Association to purchase residence property and signed a mortgage (promissory) note and mortgage covenant and agreement. The mortgage covenant required mortgagor to pay "escrow" funds to teh mortgagee, as estimated by mortgagee, in monthly installments for the future liabilities of taxes and insurance applicable to said real property, as provided in paragraph 2 of the said mortgage covenant and agreement, as follows:

> "2. * * * The said installments shall be equal, respectively, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be held by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single payment. If the sums so deposited shall not be sufficient to pay the taxes, assessments and premiums when the same become due, mortgagor agrees to forthwith pay to mort-

gagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefor, the excess shall be credited upon the principal."

Mortgagee-Metropolitan furnished monthly installment-payment cards to the said mortgagor wher the estimated sums for "escrow" were included in the total or aggregate amount consisting of principal, interest and "escrow". Mortgagee refused to furnish receipts or copies of receipts for any or all disbursements made from mortgagor's "escrow" account with the explanation that even if receipts were furnished to mortgagor she would not understand them. Thus, mortgagor never saw any tax bills as assessed in her name as title-holder of said property; she never saw any insurance billings in her name. Mortgagee-Metropolitan obtained said tax bills and insurance billings directly from the taxing authorities and insurance companies all during the period of the mortgage, and mortgagor was denied access to said billings involving said mortgaged property.

Further, on April 26, 1968, mortgagor complained to the mortgagee (Metropolitan) that:

(a) Mortgagee-Metropolitan failed and neglected to pay the taxes or insurance timely, in 1963, 1964, 1965 and 1967, jeopardizing the security of mortgagor and her property as title-holder.

(b) Mortgagee required, from time to time, excessive "escrow" funds which mortgagor disputed and recomputed using the same figures which mortgagee used in said

computations, and which said requirements would have resulted in excessive "escrow" amounts if mortgagor had not disputed said computations as she did. The said "excessive" requirements were in addition to and separate and apart from the mortgagee's estimated amounts as shown in the aggregate amounts of principal, interest and "escrow" by the monthly-installment payment cards.

(c) Mortgagor paid the "escrow" amounts each and every month without fail, by the aggregate amount shown on the payment cards, and she paid additional amounts into the "escrow" account after recomputing the "excessive" amounts computed by the mortgagee.

(d) Because of mortgagee's failures and negligence in mishandling mortgagor's "escrow" funds, mortgagor requested that she be permitted to pay her own liabilities of taxes and insurance, directly, instead of by "escrow" funds for mortgagee's seld-dealing purposes.

During the history of this mortgage loan, where the mortgagee had sole control of the allocation of payments as to principal, interest and "escrow", payments by mortgagor were made as follows:

	Aggregate Amts Required by Mortgagee (Metro)	Mortgagor Cramer Paid
7-29-63, at closing	$ 619.05	$ 619.05
First monthly installment due Sept 15, 1963		
1963		
4 months at $133.50	534.00	534.00
Additional "escrow"	144.00	144.00
1964		
12 months at $133.50	1,602.00	1,602.00
1965		
2 months at $133.50	267.00	267.00
4 months at $147.00	588.00	588.00
6 months at $147.00	882.00	1,284.94
Additional "escrow" paid		243.00
1966		
12 months at $147.00	1,764.00	2,771.41
1967		
2 months at $147.00	294.00	444.04
10 months at $150.00	1,500.00	2,324.31
1968		
2 months at $150.00	300.00	478.22
1 month at $154.00	154.00	245.04
1 month at $186.00 (April)	186.00	196.17
	$8,834.05	$11,741.18

Mortgagor's payment for April 15, 1968, which was the last current monthly installment, immediately prior to the published foreclosure of May 23, 1968 was accepted and allocated by Metropolitan-mortgagee as follows:

April 26, 1968	Principal & interest	$103.81
	Escrow	82.19
	Additional principal	10.17
		$196.17

The mortgage note provided for a 15-day forbearance or waiver period, for current payments made during and between the 15th and the 30th of each month, as follows:

> " * * * At its option, in lieu of increasing the rate of interest as above provided during the period of any default, the association may collect a "late charge" not to exceed an amount equal to four per centum (4%) of any installment which is not paid within fifteen (15) days from the due date thereof, to cover the extra expense involved in handling delinquent payments."

Therefore, "Late charges" were not applicable until after the 30th of each month. The monthly-installment payment cards also showed "AFTER THE 30TH ADD LATE CHARGE" which was an election of the option by the mortgagee.

Mortgagee (Metropolitan) did not answer to mortgagor's request of April 26, 1968, regarding being permitted to pay her own liabilities of taxes and insurance directly instead of by "escrow" funds for mishandling by said mortgagee, and on/or about May 5, 1968, mortgagee (by John C. Denyer) telephoned Cramer and orally required payment of over $400.00 by May 10, 1968, and also refusing to furnish mortgagor-Cramer anything in writing to support said "requirement" of over $400.00. Mortgagor-Cramer refused to pay said $400.00, where mortgagee refused to furnish any supporting written information or demand.

Subsequently, mortgagee furnished the following inconclusive and insufficient memo, without any supporting receipts or other information:

"As of May 10th Metro needs:

6 months County Tax at 37.57	$225.42
11 months City Tax at 7.47	82.17
24 months Hazard Ins. at 4.00	96.00
11 months M.G.I.C. Ins. at 2.76	30.36
	$433.95
Less Credit balance in "escrow"	32.92
Shortage of requirements	$401.03 "

With the recent increase in April 1968 for "escrow" from $50.19 to $82.19 per month, the additional $401.03 "required" by said mortgagee would have resulted in an excessive amount in the "escrow" account of $468.95 at the end of the year 1968 and after disbursements.

Mortgagee exercised the power of sale on/or about May 16, 1968, where the first insertion of foreclosure publication occurred on May 23, 1968, where the published foreclosure amount of $12,519.37 included $433.95 of mortgagor's own moneys, which was not an "indebtedness secured." The published foreclosure figure of $12,519.37 was in excess of the entire indebtedness of $12,008.99, as follows:

Principal balance	$12,041.91
Less "escrow" credit	32.92
Indebtedness secured	$12,008.99
Excessive interest	109.35
Mortgagor's own moneys—	401.03
Published foreclosure amount	$12,519.37

The said foreclosure by advertisement was a premature exercise of the power of sale, precipitously and maliciously, in perversion of said power of sale where mortgagee foreclosed on mortgagor's own moneys for "escrow"—for future taxes and insurance not yet assessed, not yet billed, where nothing was due and nothing was unpaid, and no "deficiency" existed.

The power of sale in paragraph 8 reads as follows:

"8. In the event of default in the payment of said indebtedness, or any part thereof, or in the performance of any of the covenants or conditions hereof, mortgagee may, without notice, at its option, declare the entire indebtedness secured hereby due, then or thereafter, as it may elect, regardless of the date of maturity and is hereby authorized and empowered to sell or cause to be sold said premises, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder, and all costs and charges of the sale (including the attorneys' fee provided by statute), rendering any surplus moneys to mortgagor. The commencement of proceedings to foreclose this mortgage in any manner authorized by law shall be deemed an exercise of the above option."

(Contrary to the defective and dishonest decision of the Michigan Supreme Court, reported at 401 Mich 252, mortgagor-Cramer never failed to pay "escrow" each and every month; Cramer never defaulted "in the performance of any of the covenants or conditions" for the reason that she paid "escrow" amounts to said mortgagee each and every month without fail prior to the foreclosure publication.)

Mortgagor-Cramer disputed the excessive sum of $401.03 for the reason that the excessiveness was obvious to anyone with the ability to add, substract and divide in two-digit sets of figures. Unfortunately, the members of the Michigan Supreme Court lack such minimal talent in simple arithmetic, being mentally disabled by pathetic delusions of what constitutes justice under the law, and where the Michigan Supreme Court has said "For a

period of time, plaintiff made timely payments, including escrow, and in fact, was well ahead of her repayment schedule for principal." No right of foreclosure exists where mortgagor "was well ahead of her repayment schedule" and even including the payments immediately preceding the foreclosure date of May 23, 1968, where in the January, February, March and April payments the mortgagee credited said mortgagor with additional principal where the mortgagee had sole control of the allocation of the aggregate sums of principal, interest and "escrow."

Further, the Michigan Supreme Court has corruptly changed the "Order Dissolving Temporary Restraining Order" dated September 27, 1968, which was not an appealable judgment, as follows: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default."

Following the entry of the "Order Dissolving Temporary Restraining Order" of September 27, 1968, the mortgagee (Metropolitan) submitted the Sheriff's Bidding Statement where there was no "deficiency" in escrow shown and instead showed an "escrow" credit balance which the said mortgagee applied in reduction of the principal balance and where the said mortgagee sold the property to themselves on October 1, 1968, three (3) days after said Order dated September 27, 1968. Therefore, no alleged deficiency existed.

In the prior "proceedings" the attorneys hired by mortgagor (sho are also named parties in this action) by acts of negligence, misconduct, legal malpractice, fraud, deceit and concealment, failed to take issue with said "Order Dissolving Temporary Restraining Order" entered September 27, 1968. Further, attorney-Allen Counard misrepresented to

client-Cramer that in August 1971 by his "Motion to Strike" pertaining to affirmative defenses of mortgagee-Metropolitan as to "adjudged in default" and that the Wayne Circuit Court in granting said motion to strike that the adjudication of default had been removed. Further, an Order granting of denying motion to strike is not appealable.

The entire foreclosure matter is and was a perpetration of fraud, and whereby it involves fraud, concealment and deceit of the attorneys (on both sides) and constituting legal malpractice (on both sides), defendant-mortgagor did not have a full and fair opportunity to litigate the issue in the prior "proceedings" and where the Michigan Supreme Court has condoned fraud, by the decision rendered October 6, 1977, reported at 401 Mich 252, said mortgagor-defendant-Cramer is not collaterally estopped in this action presenting a federal question in a federal court.

ARGUMENT AND LAW

The "Order Dissolving Temporary Restraining Order" entered in the prior "proceedings" in the Wayne Circuit Court No. 115-792, dated September 27, 1968, was not an adjudication of "Default" in mortgagor-Cramer's mortgage, where said mortgagor was not permitted to be heard. In 59 CJS, Mortgages, at 601 (page 1051) it is stated:

> " * * * The mere fact that a mortgagor takes not legal steps to stop a foreclosure which is wholly unauthorized and void because no default in the conditions of the mortgage has occurred does not necessarily bar him on the ground of ratification or estoppel from questioning it afterward * * * ."

Further, in 59 CJS, Mortgages, at 559(page 924) "Notice of default."

> "There must be a compliance with statutory provisions requiring the filing of a notice of default, * * * A notice filed before actual default is premature, and a sale thereunder has been held to be void." Hayward Lumber & Investment Co. v Corbett, 32 P2d 41, 138 Cal App 644.

Thus, where there was no default in the conditions of the mortgage and where mortgagor-Cramer had never failed to perform her covenant the performance of which was to pay "escrow" funds to the mortgagee, the mortgagee failed to comply with statutory provisions and in fact, violated statutory provisions by commencing said foreclosure by advertisement where mortgagor was not in default in the performance of a condition where mortgagor-Cramer paid "escrow" each and every month without fail.

> MCLA 600.3204; MSA 27A.3204; "To entitle any party to give a notice as hereinafter prescribed, and to make such foreclosure, it shall be requisite: (1) That some default in a condition of such mortgage shall have occurred, by which the power to sell became operative; * * * ."

Where there was no default by said mortgagor-Cramer and where said mortgagor paid "escrow" moneys to mortgagee each and every month without fail, the power of sale was not operative. "Powers of sale should be strictly construed and fairly exercised, * * * " 59 CJS 557, Mortgages; and "Where statutes regulate the exercise of powers of sale in mortgages and trust deeds, full compliance with such provisions is essential to the validity of the sale. The statute in such cases supersedes the grant of power in the mortgage and is read into it as though set out therein." Thus, where mortgagor had never failed to pay "escrow" moneys in performance

of the conditions of said mortgage, there was no default by the mortgagor and the said mortgagee was not authorized to exercise the power of sale.

Furthermore, where there was no deficiency in the "escrow" account and instead there was an "escrow" credit balance which the mortgagee applied in reduction of the principal balance on the Sheriff's Bidding Statement of October 1, 1968, therefore, there was no "indebtedness" in the "escrow" account. The sum of $401.03 which the mortgagee included in the amount claimed to be due, by publication of the "Notice of Mortgage Sale" dated May 23, 1968, was not an "indebtedness" and where mortgagor had not "defaulted" in payment of escrow, and in fact, mortgagor had paid "escrow" each and every month without fail, the entire foreclosure occurrance and the "proceedings" following were the perpetration of a fraud by the mortgagee-Metropolitan and their attorneys.

The mortgagee foreclosed the mortgage loan in acceleration of mortgagor's own moneys, which was not an indebtedness and where said mortgagee had not advanced any of its moneys and where there was no "deficiency" in the "escrow" account. There mortgagee exercised the power of sale to foreclose on mortgagor's own moneys, in perversion of said power of sale, mortgagee had declared "the entire indebtedness secured hereby due" which wrongfully included mortgagor's own moneys for for payment of Future taxes and insurance and where nothing was due and nothing was unpaid. The said "indebtedness" was only the principal balance owing of $12,041.91 less "escrow" credit balance of $32.92, or "indebtedness" of $12,008.99, as of May 23, 1968 the date of publication, and which mortgagee published a figure of $12,519.37, contrary to the provisions of paragraph 8 of the mortgage covenant and agreement, and in violation of the mortgage (promissory) note, during the

> period of any default, the association may collect a "late charge" not to exceed an amount equal to four per centum (4%) of any installment which is not paid within fifteen (15) days from the due date thereof, to cover the extra expense involved in handling delinquent payments."
> (Signed) Virginia Cramer (L.S.)"

Thus, where no "late charges" were applicable and where the mortgagee (Metropolitan) had complete and sole control of the allocation - of the aggregate amount consisting of principal, interest and "escrow", and where said mortgagee credited mortagor's "escrow" account each and every month without fail, there was no default in the conditions of the mortgage where mortgagor never failed to perform her covenant, the performance of which was the payment of "escrow" moneys as a condition.

The foreclosure by advertisement action was a misuse of process for the reason that mortgagor was not in default of any conditions of the mortgage covenant and agreement, and where the mortgagee retracted the "waiver" - period of 15 days and published the foreclosure on May 23, 1968, prior to the 30th of the month, prematurely and maliciously for the reason that mortgagor complained about the mishandling of said "escrow" funds and where mortgagee failed and neglected to pay taxes and insurance timely or when due with said mortgagor's "escrow" funds. In 11 M.L.P., Estoppel, at 7, Waiver, it states:

> "Waiver is the intentional relinquishment of a known right by acts which indicate an intention to relinquish it or by so neglecting and failing to act as to induce a belief that it was the intention and purpose to waive. * * * An executory waiver, being in the nature of a promise

forebearance or waiver period of 15 days, where no late charges and no penalty would be applicable.

In Black's L. D. 4th edition, "Forbearance" is defined as:

> "Act by which creditor waits for payment of debt due him by debtor after it becomes due." Upton v Gould, 64 Cal App 2d 814, 149 P2d 731, 733
>
> "A delay in enforcing rights." Shaw v Philbrick, 129 ME 259, 151 A 423, 74 ALR 290
>
> "Indulgence granted to debtor." Dry Dock Bank v American Life Ins. etc. Co. 3 NY 354
>
> "Refraiing from action. The term is used in this sense in general jurisprudence, in contradistinction to "act." Hafer v Spaeth, 22 Wash 2d 378, 156 P2d 408, 411

Where the mortgage (promissory) note allowed mortgagor to pay within 15 days after the due date, without penalty or late charge, this constitutes a waiver which cannot be retracted.

The mortgage (promissory) note, and as incorporated in the mortgage covenant and agreement by reference, provides as follows:

> " * * * The monthly payments herein provided for shall be applied first upon interest and the remainder upon principal.
>
> "Privilege is reserved to prepay, without premium or fee, the indebtedness in whole, or in an amount equal to one or more monthly payments on the principal that are next due on this note, on the 15th day of any month prior to maturity, provided that the monthly payment due on the said 15th day of the month shall have been paid. At its option, in lieu of increasing the rate of interest as above provided during the

or a contract, must be supported by consideration to be enforceable, but a waiver, partaking of the principle of an election, needs no consideration and cannot be retracted." American Locomotive Co. v Chemical Research Corp., 1949 171 F2d 115, cert den 69 S Ct 515, 336 US 909, 93 L Ed 1074, and American Locomotive Co. v Gyron Process Co., 69 St Ct 515, 336 US 909, 93 L Ed 1074.

Thus, where mortgagor could not even expect "late charges" to be applicable, until after the 30th of the month, the mortgagee accelerated the indebtedness of principal, prematurely and maliciously, during the 15-day "waiver" period of the mortgage note, in violation of said waiver period by retracting the waiver without notice. Also, in the instant case, mortgagor was disputing the excessive amounts computed by the mortgagee and labeled as "shortage of requirements" and where there was no deficiency in mortgagor's "escrow" account. The Notice of Mortgage Sale published on May 23, 1968, before actual default, was premature (mortgagor's payment of May 29, 1968, was the first and only payment which did not include any "escrow") and a sale thereunder has been held to be void by the court. Hayward Lumber & Investment Co. v Corbett, 32 P 2d 41, 138 Cal App 644.

"To enforce a mortgage, the mortgagee must prove his debt, and can recover only to the extent of what he proves." Wood v Weimar, 104 US 786, 26 L Ed 779

The foreclosure was illegal for the reason that "escrow" money is not a debt. Further, in 17A CJS, Contracts, at 397, it states: " * * * and where a contract has been fully performed by one party it cannot be terminated by the other." Union Pacific Railroad Company v Kansas City Transit Company, Inc., 401 SW 2d 528, 534; Business Men's Assur. Co. of America v Eades, 161 SW 2d 920, 290 Ky 553.

Taxes are not valid debts unless lawfully imposed. Gully v First National Bank, 1936, 299 US 109, and the "escrow" monies are not an indebtedness (or not a debt) where no taxes and no insurance were due, none were assessed; none were billed, and none were unpaid. Nothing was due and nothing was unpaid. However, mortgagee blatantly refused to provide anything to substantiate the "requirements" for the "escrow" account, and further, mortgagee blatantly refused to provide receipts or copies of receipts to substantiate any disbursements from the "escrow" moneys belonging to the mortgagor. The United States Supreme Court in Longyear v Toolan, 209 US 414, 28 S Ct 506, (1908) held that it was unquestioned that the owner of real property is entitled to claim the protection of the Due Process Clause in respect to the assessment and collection of taxes.

The mortgage contract in the instant case does not provide for a foreclosure on "moneys" and the debt or indebtedness had not matured. Black's LD Rev 4th ed., defines "indebtedness" as not a contingent liability.

> "A contingent liability * * * does not constitute indebtedness." St. Louis Perpetual Ins. Co. v Goodfellow, 9 Mo 149

Further, Black's LD 4th ed, defines "debt" as A sum of money due by certain and express agreement; as by * * * a bill or note * * * where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it." Hagar v Reclamation Dist., 111 US 701, 4 S Ct 663, 28 L Ed 569. "A sum payable upon a contingency, however, is not a debt, or does not become a debt until the contingency has happened." People v Arguellio, 37 Cal 524. Thus where the amount is unknown, or not specific, and the contingency had not

occurred such as a billing or assessment of a sum of "moneys" certain or fixed, there were no such "moneys" due or payable, in the amount of $401.03 and where the mortgagee foreclosed upon "moneys" for future taxes and insurance, not yet assessed, not yet billed, and not due, the said foreclosure was a perversion of the exercise of the power of sale. (See, Burger, A Sick Profession: 5 Tulsa L.J. 1 (January 1968)) Where the Michigan Supreme Court, as reported in 401 Mich 252, condones the fraud and the perversion of the exercise of the power of sale, and which brings the case into a worse condition, there is no question that the members of the Michigan Supreme Court are mentally disabled. No right of foreclosure exists where mortgagor was not in default of any conditions of the mortgage and where said mortgagor had paid "escrow" moneys each and every month without fail, and together with other "escrow" amounts separate and apart from the monthly-installment payments, prior to the foreclosure publication date of May 23, 1968, which was premature. In Salinger et al, v Lincoln Nat. Life Ins. Co., 52 F 2d 1080 (1931), the court held,

> "A foreclosure must comply with terms of contract. * * * Mortgagee could not properly apply moneys involved in reduction of principal amount of loan, which had not matured, and then invoke acceleration clause of mortgage by asserting that interest due was unpaid, and therefore that entire loan was due, and foreclosure of mortgage timely. * * * No right of foreclosure exists, in absence of default under either mortgage or some separate agreement."

In the instant case, mortgagor had considerably prepaid, more than she was required to pay,

where mortgagee had sole control of the allocation of principal, interest and "escrow". Mortgagee credited mortgagor's account with the amounts of "escrow" as estimated by said mortgagee and shown in the aggregate total on each installment-payment-card as furnished by mortgagee to the mortgagor-Cramer. Analagous to the reasoning in Salinger et al v Lincoln Nat. Life Ins. Co., supra, mortgagee could not properly apply moneys involved in reduction of principal, over and above the regular principal, and then invoke the acceleration clause of the mortgage by asserting that "escrow" allegedly due was unpaid and therefore entire loan was due on May 23, 1968, the published foreclosure date, and where mortgagor, in fact, had made payments including escrow, and in fact, "was well ahead of her repayment schedule" (401 Mich 252). In the instant case, m ortgagor had timely and conscientiously made her payments on the mortgage loan and into the "escrow" account, and in accordance with the monthly-installment-payment cards furnished by said mortgagee (Metropolitan), and which said payment cards specified the total aggregate amount which included principal, interest and "escrow", as shown below herein. There was no default in the payment of the debt secured and no default or no other breach of condition on the part of the mortgagor. Where the mortgagee failed to comply with the provisions of the power of sale and where such provisions do not include acceleration of payment of mortgagor's own moneys for "escrow" and where nothing was due, and that said "escrow" moneys, in no way was part of the "entire indebtedness", the foreclosure was illegal and was in perversion of the exercise of power of sale prescribing the conditions precedent to the exercise of the power of sale, where, first, a default in the secured would have had to occur. Thus, where there was no default by the mortgagor, there was no basis or no conditions precedent to the exercise of the provisions of the power of sale to permit said foreclosure. 59 CJS, Mortgages, at 559.

Mortgagor-Cramer began to pay ahead of her payment schedule in June of 1965 and continued paying more than she was required to pay each and every month therefrom and up to the time of the foreclosure dated May 23, 1968. The payments made by mortgagor for January, February, March and April 1968, immediately prior to said foreclosure date, and as allocated by mortgagee who had sole control of said allocation, were as follows:

1968	January	February	March	April
Principal & interest	$103.81	$103.81	$103.81	$103.81
Escrow	46.19	46.19	50.19	82.19
Additional principal	88.47	89.75	91.04	10.17
Total payment	$238.47	$239.75	$245.04	$196.17
Aggregate amount as shown on monthly payment card	$150.00	$150.00	$154.00	$186.00

Mortgagor-Cramer refused to pay "escrow", and especially in excessive amounts, after the foreclosure was published and not before said foreclosure-publication, for the reason that she was disputing the excessive amounts "required" by mortgagee-Metropolitan, and also for the reason that mortgagee's bookkeeping was disgraceful and said mortgagee mishandled the "escrow" by failing to pay mortagor's taxes and insurance when due and allowed said liabilities to become seriously delinquent jeopardizing the mortgagor's security and property as title-holder of said property.

The foregoing is herein set forth to show the court that mortgagor was not in default of any conditions of said mortgage, and that there was no basis for said foreclosure, and especially where mortgagor had paid "escrow" each and every month without fail prior to the said foreclosure date of May 23, 1968. The

entire foreclosure matter is a fraud perpetrated by the mortgagee and their attorneys, and where the court has condoned said fraud.

"Where material matters have arisen since a prior order to restrain the sale, the plea of res judicata may not be sustained." 59 CJS, Mortgages, at 552 (6) Hearing and Findings.

"Generally, the court may not try common-law issues and settle a disputed indebtedness between the parties," Gregg v Hight, 6 Mo App 579, "but issues material to the equitable relief sought (by plaintiff) should be decided," Smith v Bank of Pinehurst, 25 SE 2d 859, 223 NC 249.

* * * "In granting a temporary injunction the court has discretion to proceed ex parte." Douglas v Nagle, Civ App, 14 SW 2d 303.

In August of 1968, where the Wayne Circuit Court would not allow this mortgagor to proceed without hiring a lawyer, and where this mortgagor hired attorney-Abel Selburn who mis-managed the case, initially, and then abandoned the case in fraud of his client-Cramer, on September 27, 1968, the said Wayne Circuit Court entered an "Order Dissolving Temporary Restraining Order" which alleges that "the Court having determined that Plaintiff is in default on her Mortgage", and where no default was shown, said "Order" dated September 27, 1968, should be voided, nullified or vacated. Further, due to the negligence, failures, misrepresentations, legal malpractice, fraud, concealment and deceit of attorneys Abel Selburn and Allen Counard, whom the court forced your defendant-mortgagor to hire, and together with teh fraud perpetrated by the attorneys for the mortgagee-Metropolitan, and in fraudulently obtaining said "Order" where client-Cramer's attorney-Abel Selburn did not oppose the entry of said Order

and did not attend the hearing, if any, on september 27, 1968, and where client-Cramer's second attorney, Allen Counard, failed and neglected to take issue with said "Order Dissolving Temporary Restraining Order" on appeal or otherwise, in legal malpractice, the said "Order" should be voided, nullified and/or vacated, on the following grounds:

(a) Cramer, in pro per, prepared and filed her own pleadings in the Wayne County Circuit Court, on August 12, 1968, and obtained an "Order to Show Cause" with temporary restraining order enjoining the mortgage sale and foreclosure action.

(b) Where the said Wayne Circuit Court forced Cramer to hire a lawyer, and Cramer hired attorney-Abel Selburn - who failed and neglected to investigate the facts and the law and further, made no effort or attempts to amend Cramer's pro se pleadings, said pro se pleadings were insufficient to give jurisdiction.

In 59 CJS, Mortgages, at 552, Restraining Exercise of Power, (4) Pleadings (page 899), it states:

"A petition for an injunction to restrain the sale of land under a power in the mortgage or deed of trust must state fully and distinctly facts sufficient to justify the relief asked * * *. Facts and not merely conclusions of the pleader must be stated." Lester v Baxter, 191 SE 429, 184 GA 368, 111 ALR 493

" * * * if it is made to appear by the affidavit of the mortgagor, his agent, or attorney, that the mortgagor has a legal counterclaim, or any other valid defense against the collection of the whole or any

part of the amount claimed to be due, the judge may enjoin foreclosure and direct that further proceedings be had in court, the affidavit must be sufficient to support an order enjoining the sale," Green v Bartine, 209 NW 650, 50 SD 281, "and it should set forth the facts for the satisfaction of the judge, but the facts need not be stated with the same particularity required of pleadings." State v Buttz, 131 NW 241, 21 ND 540.

"An affidavit which does not allege that affiant is the mortgagor, his agent, or attorney, is insufficient to give jurisdiction." (emphasis added) Dowling v Medin, 195 NW 641, 46 SD 639.
"The application is designed to be so far ex parte as not to allow counter-affidavits as a matter of right." (emphasis added)
McCann v Mortgage, etc., Co., 54 NW 1026, 3 ND 172
Commercial Nat. Bank v Smith, 44 NW 1024, 1 SD 28

In the instant matter, the pro se pleadings were insufficient to give jurisdiction. Attorney-Abel Selburn made no effort or attempt to amend client-Cramer's pro se pleadings. The counter-affidavits of the mortgagee-Metropolitan "did not mean anything". (See Transcript of September 6, 1968)

"Mr. Selburn: I object to this on the basis he was not present at the closing.
"Mr. Doelle: It is in an affidavit.
"Mr. Selburn: He is testifying to something he was not present at.
"The Court: An affidavit does not mean anything."

Further, in 59 CJS, Mortgages, at 552, it

states: "The court may examine the mortgage as it appears of record where the record is properly identified." Beiseker v Svendsgaard, 149 NW 352, 28 ND 366. In the instant matter, there were absolutely no exhibits entered into the court record at said hearing of September 6, 1968, and nothing was identified at said hearing. The "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, as a result of the September 6, 1968 hearing, and which was the one and only hearing in said "proceedings", is not a "court" order and did not direct that further proceedings be had in court, and the court was without jurisdiction.

> "An order made in such proceedings is an order of the judge and is erroneously made as a "court" order."
> 59 CJS, Mortgages, at 552 (page 902)
> Dowling v Medin, 195 NW 641, 46 SD 639.

Furthermore, State statutes authorize appeals from judgments or orders of the court only, — and the "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, was not a judgment and was not a "court" order and was not appealable, and was entered in the absence of jurisdiction. The pro se application of "Plaintiff-Cramer" in the "proceedings" in the prior action (Wayne) No. 115-792, before Judge Thomas J. Murphy, was ex parte so as not to allow resisting affidavits of the mortgagee to be heard or considered by the judge upon the hearing of such application. Commercial Nat. Bank v Smith et al. (1890) 44 NW 1024, 1 SD 28.

Moreover, in Dowling v Medin, Circuit Judge, et al, the Supreme Court of South Dakota (1923) vacated an order enjoining the foreclosure of a mortgage by advertisement, as not properly a "court order," but an order of the judge, on the grounds of his lack of jurisdiction to make it.

As to the "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, and which is misrepresented by the members of the Michigan Supreme Court, in 401 Mich 252, as, to wit: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." --- and which is not a judgment and there were no findings of fact by the court, the Wayne Circuit Court was without jurisdiction to entertain the defendants' resisting affidavits and thus, the Wayne Circuit Court was without jurisdiction to make any finding of "default," where the mortgagee had initiated the foreclosure by advertisement and said foreclosure matter is strictly a Legislative matter, under the provisions of the Michigan State Statute of foreclosure by advertisement. (See mortgagor-Cramer's "Motion for Reformation of Michigan Supreme Court Defective Decision reported at 401 Mich 252" following hereto, where federal questions are presented as to legislative state action and judicial state action involved in the application of MCLA 600.3201 et seq., MSA 27A.3201 et seq.; "Foreclosure by Advertisement" add constitutional questions involved under federal law.)

> "Although the requirements of mutuality need not be met for collateral estoppel to be applied in an action presenting a federal question in a federal court, even if the party asserting the estoppel was a stranger to the prior action, the doctrine of collateral estoppel was inapplicable where the party against whom the estoppel was asserted did not have a full and fair opportunity to litigate the issue in the prior proceeding since the issue of liability was therein determined by a court sitting without a jury in an injunction proceeding and the defendant (defendant-mortgagor herein) was entitled to trial by jury as a matter of right under the

United States Constitution and the Federal Rules of Civil Procedure, in the subsequent civil action. Rachal v Hill (CA 5) 435 F2d 59, cert den 403 US 904, 29 L Ed 2d 680, 91 S Ct 2203.

Thus, the "Order Dissolving Temporary Restraining Order" dated September 27, 1968, should be voided, nullified and/or vacated, coram non judice, for the reasons above-shown and as dependent upon lack of jurisdiction and/or absent of jurisdiction, and summarized as follows:

1. The Wayne Circuit Court (prior action No. 115-792) was without jurisdiction to entertain mortgagee's resisting affidavits in an ex parte application and proceeding to enjoin the foreclosure by advertisement.

2. No exhibits and no identifications were entered into the record at the hearing resulting in an "Order Dissolving Temporary Restraining Order" dated September 27, 1968, and no default in the mortgage was shown.

3. The saie "Order Dissolving Temporary Restraining Order" was not a judgment (as misrepresented in 401 Mich 252); it was not an order of the "court"; it did not direct that further foreclosure proceedings be had under the supervision of the court; there were no findings of fact relative to "default in the mortgage" or anything else; jurisdiction of the court may not be invoked to enforce provisions of an illegal contract; that an Order made by the Court without jurisdiction is void; that a court order obtained upon a false and fraudulent suggestion or allegation is a nullity.

4. Mortgagor-Cramer's evidence was not heard and the judge would not permit mortgagor-Cramer to be heard.

5. That by the misconduct, negligence, failures, fraud, deceit, concealment, and legal malpractice of the attorneys whom mortgagor-Cramer hired, and where said attorneys neglected and failed to investigate fact and law and failed to take issue with said "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, fraudulently as a finding of "default in Plaintiff's mortgage"—in the absence of due process, defendant-mortgagor-Cramer's affidavit did not show facts sufficient to invoke the judicial power to enjoin the foreclosure by advertisement, and the said attorneys, whom defendant-mortgagor-Cramer hired for their so-called "expertise" in the law, failed and neglected to seek the proper remedy as to the fraudulent "finding of default" where said — "Order" dated September 27, 1968, was fraudulently obtained, and where the attorneys of record (on both sides) perpetrated fraud upon defendant-mortgagor-Cramer and upon the court, in legal malpractice.

For the reasons herein-shown, the "Order Dissolving Temporary Restraining Order" dated September 27, 1968, in prior action (Wayne) No. 115-792, entered in the absence of jurisdiction, and misrepresented as reported in 401 Mich 252, should be voided, nullified and/or vacated, coram non judice.

Respectfully submitted,
/s/ Virginia Cramer
Petitioner In Pro Per
Defendant-mortgagor

Dated:
Nov 12, 1979

(Affidavit attached)

Filed November 23, 1979 - No. 9-72789
U. S. District Court

RESPONSE TO PLAINTIFF'S MOTION TO VOID NULLIFY, OR VACATE WAYNE COUNTY CIRCUIT COURT ORDER DATED SEPTEMBER 27, 1968

The Defendants and Co-Defendants McClintock Donovan Carson & Roach, James I. McClintock, Michael Doelle and William P. Thorpe, by their attorneys McClintock Donovan Carson & Roach responds to Plaintiff's Motion to Void, Nullify, or Vacate Wayne County Circuit Coirt Order dated September 27, 1968 and states that said Motion contins the same matters alleged in Plaintiff's Complaint for Declaratory Judgment and Petition for Removal and Defendants and Co-Defendants hereby adopt by reference their Motion to Dismiss dated August 8, 1979 and heretofore filed in this Court on August 9, 1979 and state that the Court should dismiss the instant Motion and grant the other relief requested in Defendant's Motion to Dismiss.

Respectfully submitted,
MCCLINTOCK DONOVAN CARSON & ROACH
unsigned
By William P. Thorpe (P21436)
Attorneys for Defendants and Co-Defendants

Dated:
Nov 20, 1979

Filed December 3, 1979 No 9-72789
U. S. District Court

OPPOSITION TO DEFENDANTS AND CO-DEFENDANTS RESPONSE TO MOTION TO VOID, NULLIFY, OR VACATE WAYNE COUNTY CIRCUIT COURT ORDER DATED SEPTEMBER 27, 1968

Petitioner-mortgagor-Cramer, in pro per, in

opposition to Defendants and Co-Defendants McClintock Donovan Carson & Roach, et al, response to her Motion to Void, Nullify, or Vacate Wayne County Circuit Court Order Dated September 27, 1968, says as follows:

1. That Co-Defendant William P. Thorpe, on his own behalf and on behalf of Defendant-Metropolitan Federal Savings and Loan and other Co-Defendants James I. McClintock, Michael Doelle, et al, continues to mislead and misrepresent matters to the court; and that contrary to said "response" and their Motion to Dismiss filed August 9, 1979, Co-Defendant William P. Thorpe evades the issues and the underlying facts of fraud, concealment and deceit of the attorneys (on both sides) and constituting conspiracy and legal malpractice, and where your Petitioner was subjected to:

a. conspiracy and collusion, and legal malpractice

b. denial of due process; and corrupt practices in courts

c. deprivation of civil rights

d. denial of redress of grievances

e. state court opinions and decisions based on false facts

f. state action (exertion of power) involved, without jurisdiction

g. wrongful foreclosure; illegal foreclosure on illegal contract

h. deprivation of right and/or opportunity to be heard

i. fraud condoned by the state court, in absence of jurisdiction

j. unscrupulous and perverted mentality of the sick members of the legal profession; negligence and deceptions

K. perversion of camaraderie and cover-up between unprincipled members of the legal system

l. Illegal ex parte communications between lawyers and judges and exploitation for unjust purposes

m. oppression, humiliation and damages

n. among other injustices; anti-trust violations.

2. That Co-Defendant-attorney William P. Thorpe is the only party, and on behalf of his unscrupulous clients, who has filed any pleading in "response" to Petitioner-mortgagor-Cramer's "Motion to Void, Nullify and/or Vacate Order dated September 27, 1968"; that none of the other multiple-parties in this suit have taken any exception to said Petitioner's motion.

3. That all during the state court "proceedings" said members of the "legal" profession sought and successfully invoked and obtained, by fraud, concealment and deception, the aid of the court to enforce an illegal contract.

4. That Co-Defendant-attorney William P. Thorpe now asserts as his affirmative defense: "lack of jurisdiction over the subject matter on the grounds that the matters stated therein are res judiciata and/or collaterally estopped".

5. BS. (pro se pleadings of layperson-litigant should be liberally construed by the federal courts)

6. That the federal courts have jurisdiction over the subject matter; res judicata may not be sustained; and that your Petitioner is not collaterally estopped where the subject matter was not previously litigated in the Wayne County Circuit Court prior action No. 115-792 and reported in 401 Mich 252, as more particularly shown in Petitioner's Motion to Void, Nullify and/or Vacate Order dated September 27, 1968 and her brief therein; and as more particularly shown, by omissions and deceptions in the Exhibits attached to attorney-William P. Thorpe's motion to dismiss filed on August 9, 1979; and Petitioner's brief herein.

WHEREFORE Petitioner-mortgagor-Cramer prays that this HONORABLE Court grant Petitioner's motion to void, nullify and/or vacate Order dated September 27, 1968, and deny Defendants and Co-Defendants motion to dismiss Petitioner's Complaint for Declaratory Judgment and deny such other relief requested by said Defendants and Co-Defendants.

Respectfully submitted,
/s/ Virginia Cramer,
Petitioner, Defendant-
Mortgagor in pro per

Dated:
Nov 30, 1979

Filed December 3, 1979 No. 9-72789
U. S. District Court

BRIEF IN SUPPORT OF OPPOSITION TO DEFENDANTS AND CO-DEFENDANTS RESPONSE TO MOTION TO VOID, NULLIFY, AND/OR VACATE WAYNE COUNTY CIRCUIT COURT ORDER DATED SEPTEMBER 27, 1968

(AND SUPPLEMENT TO MORTGAGOR-CRAMER'S MOTION)

FACTS:

The instant matter involves a mass mortgage-loan contract which requires the "borrower" to pay "escrow" moneys or funds, in advance, to the mortgagee-lending institution, for future liabilities of taxes and insurance-- which may become due on the mortgaged property. When the said contract is read in its entirety, the mortgagor is restricted, prohibited, precluded and prevented from paying said liabilities of taxes and insurance. The mortgage loan is not available unless the mortgagor agrees to pay said "escrow" funds. It is not a mutual covenant and where the mortgagee, in the instant case, failed and neglected to pay the taxes and insurance when due, and in fact, allowed said mortgagor's liabilities to become seriously delinquent and otherwise mishandled the said "escrow" fund account, mortgagor-Cramer requested that she be permitted to pay her own taxes and insurance directly, instead of paying "escrow" to said mortgagee.

In malicious retaliation to mortgagor's complaints regarding the mortgagee's failures and negligence, and where mortgagee "required" excessive "escrow" funds (called "cushioning" in the industry) said mortgagee foreclosed by-advertisement, utilizing the Michigan Foreclosure by Advertisement statute, MCLA 600.3201, et seq., MSA 27A.3201, et seq. Mortgagee-Metropolitan Federal Savings and Loan Association and their attorneys fraudulently alleged, to wit: "Mrs. Cramer * * * continually failed and refused to make escrow payments as required by paragraph2 of the Mortgage. * * * When the foreclosure was commenced, Mrs. Cramer's escrow account was deficient in the sum of $401.16 (57a-64a)" and where attorney William P. Thorpe cited the perjured testimony of John C. Denyer of Metropolitan Federal Savings and Loan, as-of September 6, 1968, in his Brief and Appendix on Appeal--Appellees, to the Michigan Supreme Court, No. 57215.

The Sheriff's Bidding Statement dated October 1, 1968, as prepared by Metropolitan and/or their attorneys McClintock Donovan Carson & Roach, showed no deficiency in the "escrow" account of Mrs. Cramer, and instead, showed a credit balance in said "escrow" account which the mortgagee applied in reduction of the principal balance. Thus, there was n o deficiency in Mrs. Cramer's "escrow" account, and Mrs. Cramer had paid "escrow" moneys to the said mortgagee each and every month without fail, together with other separate amounts for the "escrow" account, and where she had paid considerably ahead in her payment schedule while the mortgagee had complete and sole control of the allocation of the aggregate sums consisting of principal, interest and "escrow."

Thus, this is a new case arising upon new facts, and where in the prior action Mrs. Cramer's evidence was not heard and not permitted to be heard.

The entire context of the mortgage covenant and agreement is as follows:

"THIS MORTGAGE, made this 29th day of July, 1963, between Virginia Cramer of the City of Detroit, County of Wayne, Michigan, mortgagor, and METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a corporation existing under the Home Owner's Loan Act of 1933 of the United States of American, mortgagee:

"WITNESSETH: That mortgagor, for and in consideration of the sum of Sixteen Thousand Five Hundred and No/100 dollars ($16,500.00) the receipt whereof is hereby acknowledged, and for the purpose of securing the re-payment of said sum, with interest, as hereinafter provided, and any additional sums

which mortgagor (jointly or severally if more than one joins herein) may now or hereafter owe mortgagee, for which this mortgage shall be a continuing security, and of securing the performance of the covenants and conditions hereinafter contained, hereby mortgages and warrants unto mortgagee the premises situated in the City of Dearborn Heights, County of Wayne, Michigan, described as follows:

East 33 feet of Lot 5 and West 24 feet of Lot 6, of Gordon-Saperstein Subdivision No. 1 Of Part Of The SW 1/4 Of Sec. 6, T2SR10E, Dearborn Township WCM as recorded in L80 P2 Wayne County Records.

together with all easements and rights of way now or hereafter used in connection therewith and all fixtures (which shall include all articles that are ever furnished by a landlord in letting or operating an unfurnished building which are now or shall hereafter be attached to said premises in any manner).

Mortgagor covenants and agrees:

1. To pay to mortgagee at its office in the City of Detroit, Michigan, the principal sum of Sixteen Thousand Five Hundred and No/100 dollars, ($16,500.00) with interest thereon, according to the terms of a promissory note bearing even date herewith executed by mortgagor to mortgagee, which matures on the 15th day of August, 1988, and to pay when due any additional sums which mortgagor may now or hereafter owe mortgagee, as aforesaid. (emphasis added)

2. In order more fully to protect the security of this mortgage, in addition to the monthly installments of principal and interest, to pay mortgagee an installment

of the taxes and assessments levied or to be levied against said premises that will next become due, an installment of the premium or premiums that will next become due to renew the insurance on said premises (as hereinafter provided) and, if any life insurance is payable or assigned to mortgagee as additional security for said indebtedness, an installment of the premium or premiums that will next become due thereon. The said installments shall be equal, respectively, to the taxes and assessments next due and the premium or premiums for such insurance, as estimated by mortgagee, less all sums already paid therefor, divided by the number of months to elapse before one month prior to the date when such taxes, assessments and premiums will become due, such sums to be held by mortgagee, without interest thereon, to pay said taxes, assessments and premiums when due. All payments for principal, interest, taxes, assessments and premiums shall be added together and the aggregate amount thereof shall be paid by mortgagor to mortgagee each month in a single payment. If the sums so deposited shall not be sufficient to pay the taxes, assessments and premiums when the same become due, mortgagor agrees to forthwith pay to mortgagee the amount of the deficiency, and if said deposits shall exceed the amount actually paid by mortgagee therefor, the excess shall be credited upon principal.

3. To keep all insurable property covered hereby insured against loss by fire and such other hazards as may be specified by mortgagee from time to time, in such amounts and for such periods as may be required by the mortgagee, and to pay when due all premiums on any such insurance in the manner above provided. (emphasis added) All insurance shall be carried in companies approved by mortgagee and the policies and renewals (emphasis added)

thereof shall be held by mortgagee and have attached thereto loss payable clauses in favor of and in form acceptable to mortgagee. Each insurance company concerned is hereby directed to make payment for such loss to mortgagee only, and the insurance proceeds, or any part thereof, may be applied by it upon any indebtedness secured hereby or to the restoration or repair of the property damaged, at its option, and any surplus shall be paid to mortgagor.

4. To pay when due all taxes, assessments and other charges which are now or shall hereafter be a lien against said premises, or any part thereof, and for which provision has not been made hereinbefore. (emphasis added)

5. To keep all property covered hereby in good repair and condition, to comply promptly with all laws, ordinances, regulations or requirements of any governmental authority applicable thereto, and to abstain from the commission of waste. (emphasis added)

6. Should any default be made in the covenants or conditions hereof, mortgagee may, without demand or notice, pay any taxes, assessments, premiums or liens required to be paid by mortgagor, make repairs, effect any insurance provided for herein, cause the abstract of title and tax histories of said premises to be certified to date or procure new abstracts of title and tax histories in case none were furnished to it and procure title reports covering said premises to be certified to date or procure new abstracts of title and tax histories in case none were furnished to it and procure title reports covering said premises, and the sums paid for any one or all of said purposes shall from the time of the payment thereof be due, with interest thereon at the

rate of seven per centum (7%) per annum, and shall constitute a further lien upon said premises under this mortgage. In the event of foreclosure the abstract or abstracts of title shall become the property of mortgagee.

7. The failure of mortgagor to pay any taxes or assessments levied against said premises, or any insurance premiums upon policies of insurance covering said premises, in accordance with the terms hereof, shall constitute waste. (emphasis added)

8. In the event of default in the payment of said indebtedness, or any part thereof, or in the performance of any of the covenants or conditions hereof, mortgagee may, without notice, at its option, declare the entire indebtedness secured hereby due, then or thereafter, as it may elect, regardless of the date of maturity and is hereby authorized and empowered to sell or cause to be sold said premises, pursuant to the statute in such case made and provided, and out of the proceeds of the sale to retain the sums then due hereunder, and all costs and charges of the sale (including the attorneys' fee provided by statute), rendering any surplus moneys to mortgagor. The commencement of proceedings to foreclose this mortgage in any manner authorized by law shall be deemed an exercise of the above option.

9. The covenants and conditions hereof shall bind, and the benefits and advantages thereof shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all

genders. In Witness Whereof, this mortgage has been signed and sealed by mortgagor. Signed and delivered in the presence of:

Frank E. Fike
Edward J. Gilroy Virginia Cramer (L.S.)"

The Mortgage Note (promissory note) in the amount of $16,500.00 dated July 29, 1963, provides as follows:

"For value received the undersigned, jointly and severally, promises to pay to Metropolitan Federal Savings and Loan Association, or order, at its office in the City of Detroit, Michigan, the principal sum of Sixteen Thousand Five Hundred and no/100 Dollars ($165,00.00) with interest from date on any part thereof at any time unpaid at the rate of 5 & 3/4 per centum (Five & 3/4%) per annum while there is no default hereunder, or under the mortgage securing this note, and at the rate of seven per centum (7%) per annum during the period of any such default, as follows: One Hundred Three and 81/100 Dollars $103.81) on the 15th day of September, 1963, and a like sum on the 15th day of each calendar month thereafter until the entire indebtedness secured hereby has been paid in full.

"In the event of default in any promise made in this note, or in the mortgage securing it, the holder of this note and said mortgage may, without notice, at its option, declare the entire indebtedness evidenced and secured thereby due and payable, then or thereafter, as said holder may elect, regardless of the date of maturity. Protest, presentment, demand and notice of non-payment are hereby waived by every signer or endorser hereof. (emphasis added)

"The monthly payments herein provided for shall be applied first upon interest and the remainder upon principal.

"Privilege is reserved to prepay, without premium or fee, the indebtedness in whole, or in an amount equal to one or more monthly payments on the principal that are next due on this note, on the 15th day of any month prior to maturity, provided that the monthly payment due on the said 15th day of the month shall have been paid. At its option, in lieu of increasing the rate of interest as above provided during the period of any default, the Association may collect a "late charge" not to exceed an amount equal to four per centum (4%) of any installment which is not paid within fifteen (15) days from the due date thereof, to cover the extra expense involved in handling delinquent payments.

(Signed) Virginia Cramer (L.S.) "

Metropolitan Federal Savings and Loan Association, as mortgagee, refused to furnish anything to substantiate their "requirements" for estimated amounts as to "escrow", and they refused to furnish receipts or copies of receipts as to any disbursements from the "escrow" account. Mortgagor-Cramer disputed the excessive amounts "required" by mortgagee to be paid into said "escrow" account, but mortgagor-Cramer never failed to pay "escrow" and mortgagee (Metropolitan) credited mortgagor-Cramer's "escrow" account each and every month without fail. In 1963, 1964, 1965 and 1967, mortgagee failed and neglected to pay the taxes or insurance when due, allowing said liabilities to become seriously delinquent, even though funds were available for the payment of said mortgagor's liabilities. Mortgagee-Metropolitan refused to permit

mortgagor-Cramer to pay her own bills directly, and foreclosed on the mortgage-loan, with malicious intent to cause damage and harm to mortgagor-Cramer.

It is the "policy" of the various and many lending institutions not to pick-up on another's foreclosure, and therefore, Cramer faced great difficulty in obtaining another mortgage-loan, and at a higher interest rate, to redeem on said foreclosure, in June of 1969, and at a time when the mortgage market was "tight" and funds were not readily available for even new mortgages.

The Michigan Supreme Court decision reported at 401 Mich 252 is based on false, distorted and twisted facts, in this case. Instead of "Here plaintiff refused to make the (escrow) payments", in actuality and the true fact is that the mortgagee refuses to accept the principal and interest without the "escrow." Further, the mortgagee refuses to accept the principal and interest unless "excessive escrow" is paid, to fatten their coffers for self-dealing purposes.

ARGUMENT AND LAW:

In the prior action (reported at 401 Mich 252) defendant-mortgagor-Cramer was not permitted to be heard on the foreclosure action taken by mortgagee-Metropolitan Federal Savings and Loan. The three (3) different lawyers whom Cramer hired, together with Metropolitan's lawyers, made the case with certainty so that Cramer would not be heard, in deprivation of her civil rights, among other deprivations and denial of due process. Therefor, the said foreclosure matter has never been litigated. Contrary to Mr. William P. Thorpe's assertion of "lack of jurisdiction over subject matter", the federal court properly assumes jurisdiction to determine issues of fact arising in a controversy.

"District court properly assumed jurisdiction of action to redress alleged deprivation of civil rights, wherein court's jurisdiction over subject matter was challenged, since court must assume jurisdiction to decide whether allegations state a cause of action on which court can grant relief as well as to determine issues of fact arising in the controversy." (emphasis added) Westminster School Dist. of Orange County v Mendez, C.C.A. Cal. 1947, 161 F 2d 774.

"The pleadings of a pro se complaint should be held to less stringent standards than formal pleadings drafted by lawyers." Dupart v U. S., C.A. La. 1976, 541 F 2d 1148; Shaw v Briscoe, C.A. Tex 1976, 541 F 2d 489, cert den 97 S Ct 1556, 430 US 933, 51 L Ed 2d 778; McKinney v De Bord, C.A. Cal 1974, 507 F 2d 501; Guilday v Department of Justice, DC Del. 1978, 451 F Supp 717; Pyles v Keane, D.C. N.Y. 1976, 418 F Supp 269.

The affirmative defense of res judicata is not available to Defendants and Co-Defendants; and Mr. William P. Thorpe, attorney and Co-Defendant herein, offers no proof that the "foreclosure" matter was ever heard by a court of competent jurisdiction. Defendant-mortgagor has never been permitted to testify, in any kind of court as to the "foreclosure."

"Res judicata is an affirmative defense and burden of proof is on the party asserting it." Howard v Green, C.A. Ark. 1977, 555 F 2d 178. The Michigan State courts had no authority to hear or determine as to the matter of foreclosure. Stewart v Eaton, (1939) 287 Mich Rep 466.

"The fundamental requisite of due process of law is the opportunity to be heard." Grannis v Ordean, 234 US 385, 394, 34 S Ct 779, 783, 58 L Ed 1363 (1914). "The hearing must

'at a meaningful time and in a meaningful manner.'" Armstrong v Manzo, 380 US 545, 552, 85 S Ct 1187, 1191, 14 L Ed 2d 62 (1965); Goldberg v Kelly, 397 US 254, 267, 90 S Ct 1011, 1020, 25 L Ed 2d 287 (1970).

The lawers whom mortgagor-Cramer hired made it impossible for Cramer to be heard, and particularly because of the "Order Dissolving Temporary Restraining Order dated September 27, 1968" which the Michigan Supreme Court decision, 401 Mich 252, fraudulently shows as: "The Wayne Circuit Court, Thomas J. Murphy, J., granted judgment for the defendants on a finding that the plaintiff was in default." There is only one document entered by Judge Thomas J. Murphy (deceased in December 1969), and said document is not a "judgment", dated September 27, 1968. (See Petitioner-Cramer's Motion to Void, Nullify and/or Vacate Order dated September 27, 1968, filed herein on November 16, 1979.) This constitutes an original and independent proceedings, in the instant matter, to void, nullify and/or vacate an Order for fraud in the obtaining thereof, and where the State court acted without authority, and removable to the Federal district court according to the doctrine laid down in Gaines v Fuentes (La. 1876) 92 US 10, 23 L Ed 524.

"The character of the cases themselves is always open to examination for the purpose of determining whether, ratione materiae, the courts of the United States are incompetent to take jurisdiction thereof. State rules on the subject cannot deprive them of it." Barrow v Hunton, La. 1879, 90 US 80, 25 L Ed. 407.

> "Proceeding, which is equivalent of common law suit or equitable action to secure relief from an existing judgment, is independent action and removable, regardless of whether or not proceeding sought to be removed is independent in form." Id. Federal Sav. & Loan Ins. Corp. v Quinn, C.A. Ill. 1969, 419 F 2d 1014.

The Michigan Supreme Court opinion of October 6, 1977, as reported at 401 Mich 252, is based on false facts, and where said court had not authority to hear the matter or make any determination. Stewart v Eaton, supra, Further, the Michigan Court of Appeals (1971) 34 Mich App 638; 192 NW2d 50, said "Mrs. Cramer's evidence was not heard." The Federal Court of Appeals affirmed the federal district court, holding, "Principle of res judicata may not be invoked to sustain fraud and judgment obtained by fraud, or collusion, may not be used as basis for application of doctrine." Grummons v Zollinger, D.C. Ind. (1964) 240 F Supp 63, affirmed 341 F 2d 464.

> "Defense of res judicata would not be available in subsequent action as result of prior action between same parties where plaintiff's right had not been determined in prior action due to lack of opportunity to be heard and present evidence." Williams v Murdoch, C.A. Pa. 1964, 330 F 2d 745. (Id)

Where mortgagor-Cramer's evidence as to the matter of "foreclosure, and finding of default" in her mortgage has never been heard, the doctrine of estoppel is not available where the matter was not properly litigated, and because of lack of opportunity to be heard and present evidence. Stewart v Eaton, supra.

"Defense of estoppel is affirmative defense the efficiency of which cannot be determined until all facts are developed by an evidentiary hearing." (emphasis added) Collins v PBW Stock Exchange, Inc., D.C. Pa. 1976, 408 F Supp 1344.

> "Party seeking to take advantage of doctrine of estoppel must have relied to his detriment on some action or inaction by other party." Insurance Co. of North America v McCleave, C.A. N.J. 1972,

Defendant-mortgagor-Cramer asserts that the document entered by Judge Thomas J. Murphy, dated September 27, 1968, was fraudulently obtained; and that the Michigan Supreme Court rendered its opinion dated October 6, 1977, based on false and fraudulent facts. "Order made by court without jurisdiction is void." Jedele v Washtenaw Circuit Judge, 212 NW 89, 237 Mich 520. Where the finding of "default in her mortgage" and Mrs. Cramer's evidence was not heard (34 Mich App 638; 192 NW 2d 50) (1971) -- "In contemplation of law, a court order obtained upon a false suggestion is a nullity." In re Rothrock, 92 P2d 634, 14 Cal 2d 34. "An order by court without jurisdiction is void and remains without effect as completely as if never entered." Svistunoff v Svistunoff, 239 P2d 650.

Moreover, as the court can readily see upon reading the mass mortgage contract involved herein, and where the federal court has exclusive jurisdiction over the subject matter and involving suits between members of a combination, 15 U.S.C.A. 1, et seq. (Sections 1-7 and 12-27, Sherman and Clayton acts) the court is required to go to the common-law. See, 58 CJS, Monopolies, at 87. "One may not invoke the aid of the courts to enforce provisions of a contract which is invalid as in restraint of trade (or commerce) or tending to create a monopoly."

In the instant matter, when the mortgage contract is read in its entirety the restrictive covenant as to "escrow" funds inhibits, prohibits, precludes and prevents a mortgagor from complying with governmental laws, such as paying taxes and insurance on the mortgaged property, where the mortgagee fails and neglects to pay taxes and insurance with the "escrow" funds so collected. The Michigan Supreme Court opinion of October 6, 1977, reported at 401 Mich 252, considered only two (2) paragraphs of the said mortgage contract. There are nine (9) paragraphs in the mortgage contract involved, together with a separate instrument called a Mortgage Note, and which said matters were not priorly litigated. In Janich Bros., Inc. v American Distilling Co., C.A. Cal. 1977, 570 F 2d 848, the federal court of appeals said,

> "To establish a prima facie case of attem pted monopolization,a plaintiff must prove three elements:
>
> (1) specific intent to control * * * or destroy competition with respect to a part of commerce, (money)
>
> (2) predatory conduct directed to accomplishing the unlawful purpose, and
>
> (3) a dangerous probability of success."

"The phrase 'attempt to monopolize' means the employment of methods, means, and practices which would, if successful, accom plish monopolization and which, though falling short, nevertheless approach so close as to creat a dangerous probability of it." Knutson v Daily Review, Inc., C.A. Cal. 1976, 548 F 2d 795, cert denied 97 S Ct 2977, — 433 US 910, 53 L Ed 2d 1094. "In determining whether there was an attempt to monopoliz all of the acts of the defendants should be

viewed together." (Id) Knutson v Daily Review, Inc., C. A. Cal, supra.

In the instant case, some of the multiple defendants and co-defendants are members of the Michigan Supreme Court (see, 401 Mich 252).

Egads !!!

For the reasons herein shown, the court should deny all of the relief the Defendants and Co-Defendants have requested, and deny their motions to dismiss.

Respectfully submitted,

/s/ Virginia Cramer, -
Petitioner, Defendant-
mortgagor in pro per

Dated:
Nov 30, 1979

(Petitioner herein is still preparing other motions for filing in the federal court, in this matter, and it will be a few more days yet for said pleadings to be completed. Petitioner is troubled with failing eyesight and research is difficult because of the small print in said material.)
(Affidavit attached)

Filed December 21, 1979 - No. 9-72789
U. S. District Court

MOTION AND NOTICE OF MOTION FOR THREE-JUDGE COURT

TO: ALL PARTIES, DEFENDANTS AND CO-DEFENDANTS

PLEASE TAKE NOTICE that upon the complaint herein the undersigned will suggest to tnis court, the HONORABLE ANNA DIGGS-TAYLOR, at Room _____, United States District Court, Federal Building, 231 W. Lafayette, Detroit, Michigan, on January 17,

1980, at 9:30 A.M. in the forenoon, the necessity for the convening of a three-judge court in conformity with 28 USCA 1337, 28 USCA 2201, 28 USCA 2281, 28 USCA 2282, 28 USCA 2284, 28 USCA 2401 and 2403, et seq., and 28 USCA 1341, for the reason that Petitioner seeks to restrain and enjoin the Federal Home Loan Bank Board (Washington, D.C.) from refusing to issue cease-and-desist orders pursuant to 12 USCA 1461, 1464, against the approximately 5,000 (or more) banking-and-lending-mortgage-loan associations who are currently violating, encouraging and coercing, by "brain-wash" tactics, the said violations, have violated, and are about to violate commerce and antitrust laws and Acts of Congress under 15 USCA 1 and 15 USCA 2, et seq., (Sherman and Clayton Acts 1-7 and 12-27) and that Petitioner has reasonable cause to believe that the many and various such banking-and-lending-mortgage-loan associations, or any of them, are about to engage in an unsafe or unsound practice involving the collection of "escrow" funds from mortgagors and/or the non-payment of taxes and/or the delinquent payment of taxes on real property mortgaged, for a potential period of time of two to three years running concurrently and successively, causing irreparable injury, and involving illegal mortgage contracts tied-in with Foreclosure by Advertisement Statutes, MCLA 600.3201, et seq.; MSA 27A.3201 et seq., (and other foreclosure statutes among the several States) and which said illegal contracts are unenforceable against the mortgagee who collects said "escrow" moneys or funds; and that the Federal Home Loan Bank Board, its directors, officers, employees, and agents be restrained and enjoined from refusing to take affirmative action to correct the illegal conditions resulting from violations of 15 USCA 1, et seq., and illegal conditions of regulations promulgated by the members of the Federal Home Loan Bank Board under Title 12, Real Estate Loans,

Sections 545.6-1 et seq. and related sections, as to prepayment or advance payments of funds by mortgagors on individual mortgage contracts, and to restrain the enforcement and execution of said illegal contracts on mortgage loans, for repugnance to the Constitution of the United States.

Further, that Petitioner seeks to restrain and enjoin the members of the Michigan Supreme Court from refusing to take affirmative action to correct their decision and as reported at 401 Mich 252, copy of which has been filed in this federal district court, which violates the provisions of 15 USCA 1 and 2, et-seq. (Sherman and Clayton Acts, sections 1-7 and 12-27), and for repugnance to the Constitution of the United States, among other things.

Further, Petitioner moves this court for an interlocutory injunction and/or temporary restraining order to prevent irreparable injuries, such order to remain in force until the hearing and determination by the full court.

Accordingly, Petitioner will move for an order convening such a three-judge court for consideration of this action.

/s/ Virginia Cramer, Petitioner
(Defendant-mortgagor,
In Pro Per

Dated:
Dec 17, 1979

Filed December 21, 1979 - No. 9-72789
U. S. District Court

APPLICATION FOR THREE-JUDGE COURT
APPLICATION FOR INTERLOCUTORY PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER BY SINGLE JUDGE PENDING HEARING BY A THREE-JUDGE COURT

Petitioner (Defendant-mortgagor in wrongful

foreclosure) in pro per, upon her complaint heretofore filed herein and by allegations therein contained, and more specifically as set forth, but not limited to, in Count 9, ACTUAL CONTROVERSY - FEDERAL ACTION INVOLVED, and by the Michigan Supreme Court decision dated October 6, 1977, reported at 401 Mich 252, together with allegations contained, - but not limited to, Count 4, ACTUAL CONTROVERSY - STATE ACTION INVOLVED, and COunt 10, (requesting) INJUNCTIVE RELIEF AGAINST MICHIGAN SUPREME COURT JUSTICES, and in combination with Michigan Foreclosure by Advertisement Statutes, MCLA 600.3201 et seq., MSA 27A.3201 et seq., and other matters which more broadly and affirmatively allege acts in an unconstitutional manner and prohibitive by Acts of Congress under the provisions of 15 USCA 1, et seq. (Sherman and Clayton Acts sections 1-7 and 12-27) but not limited to, --- and acts prohibitive by the Fifth and Fourteenth Amendments to the United States Constitution ---Petitioner (defendant-mortgagor in wrongful foreclosure) hereby makes application for hearing of this cause and of the Petitioner-plaintiff's motion for an injunction, both preliminary and permanent, before a three-judge district court as required by 28 USCA 1337, 28 USCA 2201, 28 USCA 2284, 28 USCA 2401 and 2403, et seq., 28 USCA 2281, 28 USCA 2283 and 28 USCA 1341, but not limited to, and Petitioner-plaintiff requests that the Chief Judge of the United State Court of Appeals for the Sixth Circuit be notified pursuant to Section 2284, Title 28 of the United States Code, of the presentation of petitioner-plaintiff's application for an injunction in order that the necessary designation of judges for said court may be made.

That the Federal Home Loan Bank Board and its Director and/or Official and/or Officer in Charge is a necessary and indispensable

party as Co-Defendants in this cause of action, and whereby said Federal Agency, by their counsel the United States Attorney, have filed a motion to dismiss. Further, on December 13, 1979, Petitioner-plaintiff sought concurrance from Mr. Samuel Behringer, Assistant United States Attorney, as to an injunctive order, and which said concurrance was refused.

That Petitioner-plaintiff herein (actually Defendant-mortgagor in wrongful foreclosure) filed her Motion for Preliminary, Permanent and Eternal Injunctive Relief and Brief together with the Complaint in this cause, and Co-Defendants-members of the Michigan Supreme Court have filed a motion to dismiss. The members of the Michigan Supreme Court are individual persons even though they are Michigan State officials. Petitioner's allegations against the Michigan Supreme Court members are contained in Count 10. (requesting) INJUNCTIVE RELIEF AGAINST MICHIGAN SUPREME COURT JUSTICES, and which more broadly and affirmatively alleges acts in an unconstitutional manner, absent of their official cloaks, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and in violation of 15 USCA 1 and 2, et seq. (Sherman and Clayton Acts sections 1-7 and 12-27).

WHEREFORE Petitioner-plaintiff (defendant-mortgagor in wrongful foreclosure) prays that:

1. That the said Co-Defendants Federal Home Loan Bank Board be required to answer to plaintiff's complaint, and that their motion to dismiss be denied.

2. That the said Co-Defendants members

of the Michigan Supreme Court be required to answer to plaintiff's complaint and their motion to dismiss be denied.

3.- That jurisdiction be taken by a three-judge court pursuant to 28 USCA 1337 and 28 USCA 2201, 28 USCA 2284, 28 USCA 2281 (unconstitutional state statute involved), 28 USCA 2282 (federal statutes and regulations promulgated under the provisions of 12 USCA 1461, 1464, et seq., repugnant to the United States Constitution), and 28 USCA 1341 (collection of state taxes in repugnance to the United States Constitution) and that a three-judge constitutional court be empanelled and convened to hear and determine this case.

4. That in the meanwhile a temporary and/or interlocutory preliminary injunction be issued by a single judge as authorized by 28 USCA 2284, restraining and enjoining Co-Defendant Federal Home Loan Bank Board, its directors, officials, attorneys, employees, servants and agents, restraining and enjoining them from refusing to issue cease-and-desist orders, pursuant to 12 USCA 1461, 1464, (2) (A) (B), (3) (A) (B) (C), (4) (A) (B) (C) (D) (E), (5) (Q), et seq., and as required consonant with the Constitution of the United States, involving 5,000 or more associations, nationally, who hold million of mortgages where "escrow" moneys or funds are illegally required by said associations, and tending to be violative of 15 USCA 2, et seq., and further, in repugnance to the Fifth and Fourteenth Amendments to the Constitution of the United States.

5. That the court may deem that this case meets the jurisdictional amount of somewhere well over $10,000.00 in value and otherwise, as required in the federal jurisdiction.

6. That in the meanwhile a temporary and/or interlocutory preliminary injunction be issued by a single judge as authorized by-28 USCA 2284, restraining and enjoining Co-Defendant-members of the Michigan Supreme Court, as individual persons, from performing acts in an unconstitutional manner.

7. That if any conditional bond be required and filed by the plaintiff herein that the sum be nominal.

8. That this court grant such other and further relief to the plaintiff consistent with good conscience and in the interests of justice.

/s/ Virginia Cramer,
Petitioner-plaintiff,
Defendant-mortgagor in pro per

Dated:
Dec 17, 1979

Filed December 21, 1979 - No 9-72789
U. S. District Court

PLEASE TAKE NOTICE that Petitioner-Cramer (Defendant in wrongful foreclosure) will make application to this court, the HONORABLE ANNA DIGGS-TAYLOR, UNITED STATES DISTRICT JUDGE, presiding, on January 17, 1980, at 9:30 A.M. in the forenoon, or as soon thereafter as Petitioner in pro per can be heard, for the convening of a three-Judge court, (See Motion and Notice of Motion attached hereto) and that the opposing parties Motion to Dismiss, or Motion to Remand, and Motion for Judgment on the Pleadings be denied:

1. Because of the necessity to restrain and enjoin the Federal Home Loan Bank Board (Washington, D.C.) from refusing to issue cease-and-desist orders pursuant to 12 USCA 1461, 1464, et seq., whereby this court has original and exclusive jurisdiction under

28 USCA 1337 and 15 USCA 1 and 2, et seq., to prevent irreparable injury by unsafe and unsound practices of mortgagee-lending-associations; and for encouraging the widespread use of illegal contracts and the requirement of "escrow" funds in repugnance to the United States Constitution Amendments Fifth and Fourteenth. (Concurrence from the United States Attorney was sought by Petitioner, and which was denied.)

2. Because of the need to prevent irreparable injury and for repugnance to the Constitution of the United States, among other things, to restrain and enjoin the members of the Michigan Supreme Court, as individual persons, from refusing to take affirmative action to correct their decision reported at 401 Mich 252, which violates the provisions of 15 USCA 1 and 2, et seq. (Sherman and Clayton Acts, sections 1-7 and 12-27).

3. Because in the prior action and as reported at 401 Mich 252, the Michigan Supreme Court members, as individual persons, acted in the absence of jurisdiction and are without judicial immunity.

4. Because this court has exclusive jurisdiction under 15 USCA 1 and 2 et seq., and original jurisdiction under 28 USCA 1337, 28 USCA 2201, 28 USCA 2281, 28 USCA 2282, 28 USCA 2284, 28 USCA 2401 and 2403, 28 USCA 1341; 42 USCA 1983, 1985, 1986, 1988,; and further where federal and state action are involved in violation of the Fifth and Four-Teenth Amendments to the United States Constitution.

5. Because, in any event, this federal district court has threshold jurisdiction, at least if not more; and that Petitioner is not collaterally estopped by the denial of certiorari by the United States Supreme

Court in the prior action (reported at 401 Mich 252) where the members of the Michigan Supreme Court were not parties and questions of jurisdiction were not raised; that the denial of certiorari makes no precendent and imports no expression of opinion on the merits of the case in the prior action.

6. Because the federal district court has original and/or exclusive jurisdiction of the subject matter.

7. Because the decision rendered in 401 Mich 252 (prior action) enforces the precise conduct made unlawful by the Antitrust Act enacted by Congress.

8. Because even though your Petitioner was designated as "Plaintiff" in the prior action, and, in part, in this new action, and where she was denied a choice of forum because of the foreclosure by advertisement—action initiated by the mortgagee-Metropolitan Federal Savings and Loan, in reality Petitioner is the Defendant-mortgagor and removal of the state case is appropriate.

9. Because in reality the mortgagee-lending institution (Metropolitan) is the "Plaintiff" where they initiated the foreclosure action and there are grave doubts and controversies as to the "facts" (as reported in 401 Mich 252) and your Defendant-mortgagor has defensive merits of counter-claims against the "Plaintiff-mortgagee-lending-institution."

10. Because Defendant-mortgagor's constitutional rights and guarantees were denied and ruthlessly violated, in said prior action reported at 401 Mich 252.

11. Because "Plaintiff-mortgagee's" foreclosure action and claims are founded on the laws of the United States, enacted by Congress and promulgated by the Federal Home Loan Bank Board under 12 USCA 1464 et-seq and regulations under Title 12, 545.6-1 et seq. specifically pertaining to "escrow" moneys or funds involved in a mass mortgage contract.

12. Because "removal" should be granted where federal claim or right is asserted by the "Plaintiff-mortgagee" as essential to the mortgagee-lending institution's cause of action, to wit: foreclosure on mortgagor's property based upon "escrow" funds only.

13. Because "removal" should be granted where "Plaintiff-mortgagee's' claims are founded on being "bound by (federal) regulations to require said "escrow" funds, but that the many thousands of lending institutions, as mortgagees, are bound to do nothing with said "escrow" funds belonging to the mortgagors, pursuant to Title 12, sections 545.6-1 et seq.

14. Because where Defendant-mortgagor (Cramer) was and still is the Defendant-mortgagor, both in the prior action and in this new action, where she was and is being denied due process of law, Defendant-mortgagor-Cramer may remove the suit (ex parte) to the federal court whenever the federal court could sustain original jurisdiction because of "Plaintiff-mortgagee's" action of foreclosure having been founded on the laws of the United States, and as an essential element of "Plaintiff-mortgagee's" federal issue as evidence by their claim that "Cramer refused to pay escrow," and removal jurisdiction is founded on "Plaintiff-mortgagee's" foreclosure as cause of action.

15. Because the federal district court has exclusive jurisdiction over the subject matter, to wit: the judgment reported at 401 Mich 252 enforces the contract and allows the foreclosure, enforcing the precise conduct made unlawful by the Anti-trust Act, 15 USCA 1 and 2, et seq., in derogation of the law.

16. Because "removal" of the state case is appropriate where resolution of federal issue is necessary.

17. Res judicata may not be sustained where defendant-mortgagor's evidence was not heard and was never permitted to be heard, and therefore Petitioner-Cramer (mortgagor) was denied an opportunity to be heard and present evidence.

18. The document entered by the Wayne Circuit Court (prior) action, on September 27, 1968, is void for lack of jurisdiction, and therefore no jurisdiction was established throughout the said prior action, including the Michigan Supreme Court decision reported at 401 Mich 252, due to the malpractice, negligence, fraud, concealment and deceit of the attorneys (on both sides).

19. Because judgment on the pleadings (or summary judgment) is never proper where there are issues of fact, and as pertaining to issues of conspiracy and obstructing justice.

20. Because the Michigan Foreclosure by Advertisement Statute, MCLA 600.3201 et seq., MSA 27A.3201 et seq. pertaining to "any condition of the mortgage" allowing foreclosure on "escrow" funds for <u>future</u> liabilities of taxes, not yet assessed, not billed, and not due, is state action involved and violative of the Fourteenth Amendment to the

United States Constitution, in repugnance of the Fifth Amendment to the U.S. Constitution, and/or an illegal tying-in arrangement.

21. Because the Michigan Supreme Court decision reported at 401 Mich 252 is state action involved and violative of the Fifth and Fourteenth Amendment to the United States Constitution.

22. Because the Federal Code of Regulations, under Title 12, Real Estate Loans, sections 545.1 et seq. is federal action involved and violative of the Fifth and Fourteenth Amendments, as pertaining to "escrow" funds.

23. Because Petitioner-Cramer's claim for relief and cause of action as to the Federal Home Loan Bank Board, an indispensable party, is injunctive relief for refusing to issue cease-and-desist orders to prevent irreparable injury by the unsafe and unsound practices of numerous mortgagee-lending-institutions involving mortgage contracts and "escrow" funds, and for repugnance to the U. S. Constitution, Amendments Fifth and Fourteenth, while encouraging the wide-spread use of illegal contracts in violation of antitrust laws; and where the federal court has exclusive and original jurisdiction.

24. Because the mass mortgage-contract involved and its effect of illegality and being in violation of federal antitrust laws should be decided in the federal court.

FEDERAL ACTION INVOLVED- FEDERAL HOME LOAN BANK BOARD ENCOURAGES THE WIDE-SPREAD USE OF ILLEGAL CONTRACTS

"The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties. To this rule all others are subordinate. To arrive at a proper interpretation of particular language, the entire contract must be considered." McIntosh v Groomes, 227 Mich 215.

The mass mortgage contract involved, as to "escrow" funds, inhibits, prevents, precludes, and prohibits a mortgagor from complying with governmental laws, such as paying taxes and insurance to protect the security of the property and from commission of waste where the mortgagee fails to adhere to the implied provisions of paying taxes and insurance, and is in derogation of the law, and where the implied provisions are unenforceable, and in conflict with statutory provisions.

> Act 206 P.A. 1893, as amended CL 48 211.44; MSA 7.87 Sec 44. Each property owner assumes the responsibility of administering his property. This includes payment of any taxes assessed as they become due.

See, Contracts, CJS 201; "A contract made in violation of a statute is illegal and unenforceable, and it is usually immaterial whether the thing forbidden by statute is malum in se or merely malum prohibitum." See, Contracts, CJS 191. "An agreement which violates a provision of a statute or which cannot be performed without a violation of such provision ordinarily is illegal and void. It is immaterial whether the contract is directly prohibited or arises collaterally out of transactions prohibited by statute."

In Michigan, real property taxes are assessed, billed and payable in advance. Michigan statutes providing for the subjection of sale and redemption for the enforcement and collection of tax liens for taxes delinquent and unpaid for more than one year after such assessments of taxes are returned to the State treasurer as delinquent, are set forth in MSA 7.104 and MSA 7.105, et seq. A Quick clarification of said provisions of said statutes with the County tax collector's office, reveals that property taxes may remain unpaid for a period of somewhere between 26 and 33 months before a tax sale of land would occur for the collection of such tax liens of the State, and such assessed taxes remain the liability of the title-holder of real property. Thus, the "security of the mortgage" is not jeopardized until taxes are unpaid for 26 to 33 months. Thus, accordingly, by the mortgagee's intent and purpose of collecting "escrow" funds from the mortgagor in advance before taxes are assessed and not billed, and the mortgagee invests said escrow funds for profit and gain, and for self-dealing, the mortgagor gets nothing for the moneys which belong to the mortgagor (the "borrower").

Under Title 12, Real Estate Loans, 545.6-1, et seq., promulgated under the authority of Federal Home Loan Bank Board, Code of Federal Regulations, provisions are as follows:

"545.6 Real Estate loans.

"545.6-1 Lending powers. Any Federal association may make the following types of loans on the security of first liens on improved real estate:

(a) Homes or combination of homes and business property --

(1) Monthly installment loans; flexible payment loans.

* * * up to 75 percent of the value thereof, repayable monthly within 30 years or, if an insured or guaranteed loan, within the period acceptable to the insuring or guaranteeing agency. Provided, That when so authorized by the members of such an association, such loans may be made up to:

(i) 80 percent of the value, if the loan is not an insured or guaranteed loan;

(ii) The maximum percentage of the value acceptable to the insuring agency, if an insured loan;

(iii) 80 percent of the value, plus the amount guaranteed if a guaranteed loan.

* * *

(4) Loans in excess of 80 percent of value. The limitation of 80 percent set forth in (a) (1) (i) of this section shall be 90 percent in the case of any loan meeting the following requirements:

* * *

(iii) The loan contract requires that in addition to interest and principal payments on the loan, the equivalent of one-twelfth of the estimated annual taxes and assessments on the real estate security be paid monthly in advance to the association; * * *

(emphasis added) Therefore, no "escrow" is required on any insured or guaranteed loan. "Escrow" is required on a loan 90 percent of

value, if the loan is not an insured-or guaranteed loan. However, mortgagee-lending institutions mandate "escrow" payments on all home mortgages granted, and currently, even where the downpayment is 50 percent, (where the loan is 50 percent of the value) and the mortgage-loan is almost always insured or guaranteed, and which is contrary to the above regulations, in violation of 15 USCA 1 and 2, et seq. and 15 USCA 2, et seq (Sherman and Clayton Acts section 1-7 and 12-27).

> "Even if * * * contract was bargained for agreement, parties could not contract in derogation of the law, and illegal provisions of such contract, if any, were unenforceable." Skoda v A & W Dist. Co., D.C. Tex 1976, 414 F Supp 1209.
>
> "A violation of sections 1-7 of this title which is per se illegal cannot be justified." Carlson Companies, Inc. v Sperry & Hutchinson Co., D.C. Minn 1974, 374 F Supp 1080.

15 USCA 2 (Monopolizing)

"Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several states, or with foreign nations, shall be deemed guilty of a felony, * * * "
As amended Dec. 21, 1974, Pub. L. 93-528, Sec. 3, 88 Stat. 1708

> "Generally speaking, section 1 of this title (15 USCA), which forbids all means of monopolizing trade (or commerce) by unduly restraining it by means of contracts and combinations, deals with means while this section (15 USCA 2) which condemns the result to be achieved rather than the form of the combination or the particular

means employed, deals with ends." Forrest v Capital Bldg. and Loan Ass'n., D.C. La. 1973, 385 F Supp 831, Affirmed 504 F 2d 891, certiorari denied 20 S Ct 1980, 421 US 978, 44 L Ed 2d 470.

Where the Code of Federal Regulations promulgated by the Federal Home Loan Bank-Board, may largely be permissive as to so-called "escrow" funds, the necessity to restrain and enjoin the Federal Home Loan - Bank Board from refusing to issue cease-and-desist orders to prevent irreparable injury by unsafe and unsound practices (of mandatory "escrow" funds) and the authority for such cease-and-desist orders is provided, as follows:

12 USCA /1464 (2) (A) "If, in the opinion of the Board, an association is violating or has violated, or the Board has reasonable cause to believe that the association is about to violate, a law, rule, regulation, or charter or other condition imposed * * * or is engaging or has engaged, or the Board has reasonable cause to believe that the association is about to engage, in an unsafe or unsound practice, the Board may issue and serve upon the association a notice of charges in respect thereof. * * * In the event * * * the Board shall find that any violation or unsafe or unsound practice * * * has been established, the Board may issue and serve upon the association an order to cease and desist from any such violation or practice * * * ."

The dire need for a cease-and-desist order is great, immediate and desperately urgent.

THE FEDERAL COURTS HAVE JURISDICTION AS TO SUBJECT MATTER INVOLVING MEMBERS OF THE MICHIGAN SUPREME COURT, AS INDIVIDUALS AND PERSONS, (State officers) WHO ACT WITHOUT JURISDICTION, AS PUBLIC OFFICIALS.

42 USCA 1983 "When a public official acts in an unconstituional manner, his actions are stripped of their official cloak and he may be ordered to perform his official duties in a manner consonant with the constitution; under this legal fiction, the state is presumed not to accede to unlawful actions taken by one of its officials so that an order directed to the official to affirmatively correct his action is not being directed against the State, for purpose of determining whether suit is against a "person" within meaning of this section." O'Brien v Galloway, D.C. Del. 1973, 362 F Supp 901.

Petitioner-Cramer asserts that the members of the Michigan Supreme Court acted in the clear absence of all jurisdiction in rendering their decision reported at 401 Mich 252. (See Petitioner-Cramer's Motion to Void, Nullify or Vacate Wayne Circuit Court Order dated September 27, 1968) Where the Wayne Circuit Court acted in lack of jurisdiction, coram non judice, then the entire "proceedings" following which included 401 Mich 252 lost judicial function, coram non judice.

Moreover, and on the other hand, as stated in 58 CJS, Monopolies, at 87, "One may not invoke the aid of the courts to enforce provisions of a contract which is invalid as in restraint of trade (or commerce) or tending to create a monopoly." and --- "Only where judgment of court would itself be enforcing the precise conduct made unlawful by Antitrust Act is antitrust defense allowed." See, Gutor International, AG v Raymond Packer, Co., Inc. (1974) 493 F 2d 938. Therefore,

the plea of illegality, as a defense to the instant mass mortgage contract where mortgagee (Metropolitan) initiated foreclosure by advertisement (which was not a foreclosure by suit) "the effect of said contract's illegality by virtue of contract being in violation of federal antitrust laws is a matter of federal law which should be resolved in the federal court." Appalachian Power Co v Region Properties, Inc., D.C. Va. 364 F Supp 1273.

REMOVAL OF STATE CASE IS APPROPRIATE AND PROPER

Removal under 28 USCA 1441 (a) (b) and 28 USCA 1443 (1) et seq.

The Supreme Court have amplified the traditional views, and decided that removal can be had under 28 USCA 1443 (1) if it is asserted and "can be predicted by reference to a law of general application that the defendant (defendant-mortgagor-Cramer) will be denied or cannot enforce the specified federal rights in the state courts. * * * Thus, when a denial is manifest in a formal expression of state law, there is a clear ground for removal, as under prior cases; but in addition, there is ground for removal when acts of petitioners are clearly a matter of right." Georgia v Rachel, GA 1966, 86 S Ct 1783, 384 US 780, 16 L Ed 2d 925.

The foreclosure by advertisement, as published, is dated May 23, 1968. Cramer attempted to enjoin the foreclosure in the Wayne Circuit Court on August 12, 1968, where on September 27, 1968, the "Order Dissolving Temporary Restraining Order" was entered, but which is not a "judgment", and it did not direct that further foreclosure proceedings be under the supervision of the court. Therefore, it was not a judicial foreclosure. (See Petitioner-Cramer's

Motion to Void, Nullify and/or Vacate Wayne Circuit Court Order dated September 27, 1968) Cramer's evidence was not heard and the court would not permit Cramer to be heard, in ruthless violation of the due process clause, Fourteenth Amendment to the United States Constitution, and in denial of civil rights.

The Michigan Supreme Court decision 401 Mich 252 is dated October 6, 1977, Certiorari in the United States Supreme Court was denied June 12, 1978. Cramer commenced this new action in the State Circuit Court on July 14, 1978, where the Michigan Supreme Court denied leave to appeal; Cramer filed the removal of state case on July 17, 1979.

Rem oval should be granted if federal claim or right asserted is essential element of "Plaintiff-mortgagee's" federal cause of action and federal issue is evident by "Plaintiff-mortgagee's" pleadings, to wit:

> " * * * her subsequent failure to comply with paragraph 2 of the mortgage concerning payment of escrow and the foreclosure action taken by Metropolitan."

Thus, removal jurisdiction is founded on "Plaintiff-mortgagee's" cause of action, and federal court could have sustained original jurisdiction. See, Appalac;ian Power Co. v Region Properties, Inc. et al, 364 F Supp 1273 (1973).

Further, "Defendant-mortgagor-Cramer" is not estopped from asserting illegality as defense to the contract because of the Michigan Supreme Court decision reported at 401 Mich 252, which allows antitrust defense. Gutor International, AG v Raymond Packer Co., Inc. C.A. Mass 1974, 493 F 2d 938.

The federal question has been resolved by the Michigan Supreme Court decision reported at 401 Mich 252, to wit: "She refused to pay "escrow", and therefore, breached a covenant in a mortgage by failure to perform her covenant the performance of which was a condition to pay "escrow." - However, the Michigan Supreme Court, by considering only partial of two (2) paragraphs in the mortgage contract, where there are nine (9) paragraphs, failed to note that - the paramount intent of the m ortgage contract, when read in its entirety, inhibits, prevents, precludes and prohibits a mortgagor from complying with governmental laws such as paying taxes and insurance on the real property mortgaged, in derogation of the law, and especially so when the mortgagee (lending institution) fails to pay the taxes and insurance when due with the "escrow" funds deposited by the mortgagor. Moreover, where the mortgagee refuses to accept payment of principal and interest without the "escrow", the tying-in arrangement becomes an unlawful combination. In Janich Bros., Inc. v American Dmstilling Co., C.A. Cal. 1977, 570 F 2d 848, the federal court of appeals said,

> "To establish a prima facie case of attempted monopolization, a plaintiff must prove three elements:
>
> (1) specific intent to control * * * or destroy competition with respect to a part of commerce, (money)
>
> (2) Predatory conduct directed to accomplishing the unlawful purpose, and
>
> (3) a dangerous probability of success."

"The phrase 'attempt to monopolize' means - the employment of methods, means, and practtices which would, if successful, accomplish

monopolization and which, though falling short, nevertheless approach so close as to create a dangerous probability of it. * * * In determining whether there was an attempt to monopolize, all of the acts of the defendants should be viewed together." Knutson v Daily Review, Inc., C.A. Cal. 1976, 548 F 2d 795, cert denied 97 S Ct 2977, 433 US 910, 53 L Ed 2d 1094.

In the instant case, the mortgagee-lending institution refuses to accept the principal and interest without the "escrow" funds, by monthly-installment payments; and moreover, the mortgagee (Metropolitan) refused to accept payment of principal and interest unless "excessive escrow" was paid, to fatten their coffers for self-dealing purposes; not to pay taxes or insurance inasmuch as no taxes or insurances were due, none were assessed, none were billed, none were unpaid. Nothing was due and nothing was unpaid.

> "District court properly assumed jurisdiction of action to redress alleged deprivation of civil rights, wherein court's jurisdiction over subject matter was challenged, since court must assume jurisdiction to decide whether allegations state a cause of action on which court can grant relief as well as to determine issues of fact arising in the controversy." (emphasis added) Westminister School Dist. of Orange County v Mendez, C.C. A Cal 1947, 161 F 2d 774.

Here, defendant-mortgagor-Cramer claimed that she had the right to refuse to pay "escrow" where the "plaintiff-mortgagee" Metropolitan failed and neglected to adhere to the implied provisions of the

mortgage contract where they failed to pay the taxes and insurance and allowed said liabilities to become seriously delinquent, repeatedly.

The affirmative defense of res judicata is not available to "Plaintiff-mortgagee-Metropolitan" and Co-Defendant-attorney-William P. Thorpe offers no proof that the "foreclosure" matter was ever heard by a court of competent jurisdiction.

"Res judicata is an affirmative defense - and burden of proof is on the party asserting it." Howard v Green, C.A. Ark. 1977 555 F 2d 178. Defendant-mortgagor-Cramer's evidence has never been heard and was never permitted to be heard as to the foreclosure matter. "The fundamental requisite of due process of law is the opportunity to be heard." Granis v Ordean, 234 US 385, 394, 34 S Ct 779, 783, 58 L Ed 1363 (1914). "The hearing must be 'at a meaningful time and in a meaningful manner.'" Armstrong v Manzo, 380 US 545, 552, 85 S Ct 1187, 1191, 14 L Ed 2d 62 (1965); Goldberg v Kelly, 397 US 254, 267, 90 S Ct 1011, 1020, 25 L Ed 2d 287 (1970).

THE "ORDER DISSOLVING TEMPORARY RESTRAINING ORDER" Dated September 27, 1968, SHOULD BE VOIDED BY THE COURT, on the grounds that the court lacked jurisdiction to enter such order, fraudulently obtained; Cramer's evidence was not heard and was not permitted to be heard; the false allegation of "default in her mortgage" nullifies said order. (See Petitioner-Cramer's Motion to Void, Nullify and/or Vacate Order dated September 27, 1968).

> "Proceedings, which is equivalent of common law suit or equitable action to secure relief from an existing judgment, is independent action and removable regardless of whether or not proceeding sought to be removed is independent in form." Id. Federal Sav & Loan Ins. Corp. v Quinn, C.A. Ill. 1969, 419 F 2d 1014.

In Grummons v Zollinger, D.C. Ind. (1964) 240 F Supp 63, affirmed 341 F 2d 464, the federal court of appeals held,

> "Principle of res judicata may not be invoked to sustain fraud and judgment obtained by fraud, or collusion, may not be used as basis for application of doctrine."

Further,

> "Defense of res judicata would not be available in subsequent action as result of prior action between same parties where plaintiff's right had not been determined in prior action due to lack of opportunity to be heard and present evidence." Williams v Murdoch, C.A. Pa. 1964, 330 F 2d 745. (Id)

The Michigan State courts had no authority to hear or determine as to the matter of foreclosure, unless the foreclosure sale had been set aside. Stewart v Eaton, (1939) 287 Mich Rep 466.

Defendant-mortgagor-Cramer is not collaterally estopped. "Defense of estoppel is affirmative defense the efficiency of which cannot be determined until all facts are developed by an evidentiary hearing." (emphasis added) Collins v PBW Stock Exchange, Inc., D.C. Pa. 1976, 408 F Supp 1344.

DECLARATORY JUDGMENTS, 28 USCA 2208, et seq. (Chapter 151) Creation of remedy. (not involving Federal taxes; not involving U. S. Treasury funds.)

> "In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

STATE ACTION INVOLVED

In Michigan, our own Federal District Court Judge John Feikens, in Gibson et al v First Federal Savings and Loan Association, 347 F Supp 560, 562, D.C. Mich 1973, 364 F Supp 614, affirmed 504 F 2d 826, in speaking of redress to any deprivation of civil rights under color of state law, where state process is used to foreclose mortgages where state action is involved, that court said:

> "Judicial or executive action, combined with private action, has been held sufficient to find action under color of state law, Shelley v Kraemer, 334 US 1, 68 S Ct 836, 92 L Ed 1161 (1948).

But not so here (no foreclosure was involved) for the nexus between the state-action--possible foreclosure and execution of sale by the sheriff and the alleged taking by the defendant--is too remote. To hold that the taking is under color of law would subject every contract or mortgage to constitutional scrutiny. Although

the mortgage in question may present legal questions under federal law, enforcement of that contract by the sheriff does not transform an illegal contract into an unconstitutional one." (emphasis added)

That is the bottom line in the instant case, specifically, that the contract is illegal. Moreover, the assetion of the contract being illegal would never have arisen as a-federal-question if the "Plaintiff-mortgagee-lending-institution", in the instant case, had voluntarily adhered to the implied provisions of the contract, to wit: to utilize the "escrow" funds for payment of taxes and insurance when due.

In Charles MCAllister et al., Respts., v Louis C. Drapeau, Impleaded, etc, Appt. (1939) 92 P2d 911, 125 ALR 800, 808, on the question of relief from an illegal contract, the California Supreme Court, In Banc, held:

> "Assuming that a contract is fraudulent, or against public policy, or illegal, still, where the parties to it are not in pari delicto, and where public policy is considered as advanced by allowing either, or at least the most excusable of the two, to sue for relief, relief may be given to him either against the transaction by setting it aside and restoring him to his original position, or even, in some cases, by enforcing the contract, if executory."
> Citing, Smith v Bach, 183 Cal 259, 191 P 14 Woodham v Allen, 130 Cal 194, 62 P 398; Daniels v Tearney, 102 US 415, 26 L ed 187

In the instant case, the "Plaintiff-mortgagee-lending institution" asserted "We did not sign the contract. We are bound to do nothing with the "escrow" funds."

In Shelley v Kraemer, 334 US 1, the Supreme Court said, "That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court. That principle was given expression in the earliest cased involving the construction of the terms of the Fourteenth Amendment. Thus, in Virginia v Rives, 100 US 313, 318 (1880) this court stated.

> "It is doubtless true that a State may act through different agencies, ---either by its legislative, its executive, or its judicial authorities; and the prohibitions of the amendment extend to all action of the State denying equal protection of the laws, whether it be action by one of these agencies or by another."

"In Ex parte Virginia, 100 US 339, 347 (1880), the Court observed; "A State acts by its legislative, its executive, or its judicial authorities. It can act in no other way."

"In the Civil Rights Cases, 109 US 3, 11, 17 (1883), this Court pointed out that the Amendment makes void "State action of every-kind" which is inconsistent with the guaranties therein contained, and extends to manifestations of "State authority in the shape of laws, customs, or judicial or executive proceedings." Language to like effect is employed no less than eighteen times during the course of that opinion."

"Similar expressions, giving specific recognition, to the fact that judicial action is to be regarded as action of the State for the purposes of the Fourteenth Amendment, are to be found in numerous cases which have been more recently decided. In Twining v New Jersey, 211 US 78, 90-91 (1908), the Court

said: The judicial act of the highest court of the State, in authoritatively construing and enforcing its laws, is the act of the State."

"In Brinkerhoff-Faris Trust & Savings Co. v Hill, 281 US 673, 680 (1930, the Court, through Mr. Justice Brandeis, stated: The federal guaranty to due process extends to state action through its judicial as well as through its legislative, executive or administrative branch of government."

"Further examples of such declarations in the opinions of this Court are not lacking." * * * "The action of state courts in imposing penalties or depriving parties of other substantive rights without providing adequate notice and opportunity to defend, has, of course, long been regarded as a denial of due process of law guaranteed by the Fourteenth Amendment. Brinkerhoff-Faris Trust & Savings Co. v Hill, supra. Cf. Pennoyer v Neff, 95 US 714 (1878) * * * "

"It has been recognized that the action of the state courts in enforcing a substantive common-law fule formulated by those courts, may result in the denial of rights guaranteed by the Fourteenth Amendment, even though the judicial proceedings in such cases may have been in complete accord with the most rigorous conceptions of procedural due process." (emphasis added) Erie R. Co. v Tompkins, 304 US 64 (1938) * * * "

"The enforcement of the restrictive agreements by the state courts in these cases was directed pursuant to the common-law policy of the States as formulated by those courts in earlier decisions. Parmalee v Morris, 218 Mich 625, 188 NW 330 (1922). Cf. Porter v Barrett, 233 Mich 373, 206 NW 532 (1925). "The judicial action in each case bears the clear and unmistakable

imprimature of the State. We have noted that previous decisions of this Court have established the proposition that judicial action is not immunized from the operation of the Fourteenth Amendment simply because it is taken pursuant to the state's common-law policy. (emphasis added) nor is the Amendment ineffective simply because the particular pattern * * *, which the State has enforced, was defined initially by the terms of a private agreement. State action, as that phrase is understood for the purposes of the Fourteenth Amendment, refers to exertions of state power in all forms. (emphasis added) And when the effect of that action is to deny rights subject to the protection of the Fourteenth Amendment, it is the obligation of this Court to enforce the constitutional commands.

"We hold that in granting judicial enforcement of the restrictive agreements in these cases, the States have denied petitioners the equal protection of the laws and that, therefore, the action of the state courts cannot stand. * * * "

JUDGMENT ON THE PLEADINGS (summary judgment) should be denied where there are obvious issues of fact, involving conspiracy, obstruction of justice, legal malpractice, among many other things.

WHEREFORE Petitioner (Defendant-mortgagor) in wrongful foreclosure) prays that this Honorable Court will:

1. Deny the motions to dismiss.
2. Deny the motions to remand.
3. Deny judgment on the pleadings (or deny summary judgment).
4. That jurisdiction be taken by a three-judge court for all or part of the proceedings.

5. That a temporary and/or interlocutory preliminary injunction be issued by a single judge as authorized against the Federal Home Loan Bank Board and the members of the Michigan Supreme Court, and as set forth in Petitioner's application herein.

6. That this court grant such other and further relief to the Petitioner consistent with good conscience and in the interests of justice.

Respectfully,

/s/ Virginia Cramer, Petitioner, (Defendant-mortgagor in pro per)

Dated:
Dec 19, 1979

(Affidavit attached)

Filed January 11, 1980 No 9-72789
U. S. District Court

FEDERAL DEFENDANT'S COMBINED RESPONSE TO PLAINTIFF'S MOTIONS

The Federal Home Loan Bank Board, by and through its undersigned attorneys, submits this combined response to the several motions filed by plaintiff, Virginia Cramer, after August 31, 1979. The August 31, 1979 motion to dismiss filed on behalf of the Federal Home Loan Bank Board is incorporated herein as if more fully set forth.

THERE IS NO JURISDICTIONAL BASIS TO CONVENE A THREE-JUDGE DISTRICT COURT

Title 28, Sec. 2284 sets forth when a three-judge court is required, the composition of the court, and the procedure to be followed by it. In general, a three-Judge court is to be convened when required by federal statute or when the constitution-

ality of the apportionment of congressional districts or statewide legislative bodies is an issue. 28 USC 2284(a)

A three-judge district court is presently required only in the following types of cases:

(a) When the constitutionality of the apportionment of congressional district or statewide legislative bodies is in issue.

(b) Under the Civil Rights Act of 1964, Pub L 88-352, 78 Stat 241;

(c) Under the Voting Rights Act of 1965, Pub L 89-110, 42 USC 1973(b)(a), 1973c; and the Voting Rights Act Amendments of 1970, Pub L 91-285, sections 203, 303(a), 84 Stat 317, 138;

(d) In an action by the Federal Elections Commission for declaratory or injunctive relief concerning civil matters covered by the Presidential Election Campaign Fund Act or by 26 USC 6096 relating to the designation of income tax payments to the Presidential Election Campaign Fund. 26 USC 9010. An action by the Federal Election Commission, a political party national committee or a voter to implement or construe the provisions of the Presidential Election Campaign Fund Act also requires a three-judge court. 26 USC 9011;

(e) Judicial proceedings with respect to the final system plan under the Regional Rail Reorganization Act, 45 USC 719(b).

Plaintiff Cramer's cause does not fall within any of these types of cases. In this regard, the three-judge district court apparatus was designed to provide such an extraordinary procedure only for

a limited class of cases and therefore convened only when the type of case is presented which merits such treatment. The instance at bar is not such a case.

More importantly, in any case in which an application is made to a federal district court judge to convene a three-judge court, it is settled in the law that the judge presented with such an application must initially determine the threshold question of whether jurisdiction even exists in the federal court. Pine Tp. Citizen's Ass'n v. Arnold, 453 F Supp 594 (D.C. Pa 1978). If the general requisites of federal jurisdiction are not present, it is inappropriate to even consider whether or not to convene a three-judge court. Pine Tp Citizen's Ass'n v. Arnold, supra. If federal jurisdiction is lacking, a single judge to whom a request for a three-judge court is addressed can dismiss the complaint without requesting that a three-judge court be convened. Walker v Gilligan, 487 F2d 508, 6th Cir 1973. See also Gonzalez v Automatic Employees Credit Union, 419 US 90, (1974).

The points of law expressed in Pine and Walker are applicable to the case at bar. The Federal Home Loan Bank Board believes that the jurisdictional defects cited in its August 31, 1979 Motion to Dismiss and remand are correct. This Court should dismiss the Cramer complaint and remand the entire proceeding to the particular State Court from which it was improperly removed.

CONSOLIDATION IS INAPPROPRIATE

On September 20, 1979, Cramer moved to consolidate the removed action 62249 and the prior action 57215 with the "action" designated as 9-72789. This motion is opposed because it is procedurally incorrect

and substantively prejudicial to the Federal Home Loan Bank Board.

Procedurally, Civil Action 9-72789 is the federal district court docket number for the action removed from the Michigan Supreme Court (62249). The exception taken by the Federal Home Loan Board is that upon removal to this Court, Cramer could not unilaterally join new parties such as the Board and the Michigan Supreme Court and could not unilaterally file new complaints without first having obtained prior court approval. Cramer is incorrectly characterizing her improper new complaints as a civil action when the case at the docket as 9-72789 is in fact the removal action.

Substantially, the Board's August 31, 1979 motion to dismiss demonstrates that Cramer has no standing to sue the Board. Chase Savings and Loan Ass'n v F.H.L.B.B., 269 F. Supp 965 (ED Pa 1967). See page 12). Even if this Court treats Cramer's motion to consolidate as a motion for leave to join new parties and to file the previously improperly filed complaints, it will have to resolve these substantive issues. It is respectfully urged that this Court will find that there is not jurisdiction as to the Federal Home Loan Bank Board and a resultant lack of jurisdiction, diversity of otherwise, over the remaining aspects of the case so that remand is appropriate.

Respectfully submitted,
JAMES K. ROBINSON
United States Attorney
BY /s/ SAMUEL J. BEHRINGER, JR.
(P23751) Assistant United States Attorney

Dated:
Jan 11, 1980

Filed January 17, 1980 No. 9-72789
U. S. District Court

OPPOSITION TO FEDERAL DEFENDANT'S COMBINED RESPONSE TO PLAINTIFF'S MOTIONS

Defendant-mortgagor-Cramer in removal of state case, in propria persona, submits this opposition to combined response of Federal Home Loan Bank Board, filed on January 11, 1980, and recieved in the late afternoon mail on Tuesday, January 15, 1980, and incorporating herein pleadings priorly filed, "Cramer" says as follows:

ASK NOT WHAT THE GOVERNMENT CAN DO FOR YOU BUT WHAT YOU CAN DO FOR THE GOVERNMENT - JURISDICTIONAL BASIS

Three-Judge Court - Title 28 USCA 2284 specifies (as amended) that Congress has repealed 2281 and 2282 (28 USCA); the two remaining general statutes that authorize three-judge courts being 2283 and 2284. As amended, 28 USCA 2284 reads as follows:

(a) A District court of three judges shall be convened when otherwise required by Act of Congress, or * * * " (emphasis added)

Note: language following "or" is not applicable herein (relative to apportionment of congressional districts or legislative body) and therefore, we are concerned herein with:

(2) If the action is against a State, or officer or agency thereof, at least five days' notice of hearing of the action shall be given * * * to the Governor and attorney general of the State. * * * (emphasis added)

Therefore, it is clear that a three-judge court may be required by an Act of Congress

where the action is against State officers, even though not involving "apportionment".

> "Determination of issue whether case should be heard by a three-judge district court or a single district judge controls whether appeal from final ruling goes direct to Supreme Court or to court of appeals for the circuit." Willis v Walker, D.C. Ky. 1955, 136 F Supp 181.

> "Where three-judge district court issued temporary injunction restraining state officials from enforcing state law but dissolved injunction on final hearing, * * * " Public Service Commission of Missouri v Brashear Freight Lines, Mo. 1941, 61 S. Ct 784, 312 US 621, 85 L Ed 1083, (rehearing denied)

> "Where complaint formally alleges basis for equitable relief and case is otherwise proper one for three-judge district court, applicability of Younger v Harris must be decided by three-judge panel, not by single judge." (abstention) Tapia-Tapia v Division of Appeals of Superior Court of Puerto Rico, D.C. 1975, 429 F Supp 555. (emphasis added)

Also, see Bjarsch v Di Falco, D.C.N.Y. 1969, 300 F Supp 960

> Retroactive effect.
> "Although former section 2281 of this title requiring a three-judge court to enjoin operation of a state statute on constitutional ground has been repealed, it remains effective as to pending suits." BT Inv. Managers, Inc. v Lewis, C.A. Fla. 1977, 559 F 2d 950

Elements that necessitate convening of three-judge district court are (1) a claim for injunctive relief (2) against a state

officer (3) to prevent enforcement of a statewide statute (4) that is challenged as being unconstitutional in substantial ways. Young v Walker, D.C. Fla 1977, 435 F Supp 1089.

"Although section 2281 of this title is in effect due to nonretroactivity of recent amendment of this chapter, three-judge court is only required when state statute is attacked on grounds that it violates Federal Constitution and when constitutional issue raised is substantial one." Mobil Oil Corp. v Lefkowitz, D.C.N.Y. 1977, 454 F Supp 59.

"District court must take allegations in complaint as true for purposes of determining whether to convena three-judge court; single judge can neither evaluate merits of claim, nor extend its inquiry beyond face of pleadings, but mere formalities of prayer for relief or conslusory allegations to the effect that action satisfies the prerequisites for convening special court do not oblige single judge to certify the action for consideration by three-judge court." Pine Tp. Citizens' Assn v Arnold, DC Pa. 1978, 453 F Supp 594.

And, on the other hand, --- "Regardless of nature of relief sought, single judge has authority to review complaint seeking convening of three-judge court in order to determine whether it states substantial claim and one over which the court would have jurisdiction and that review by single judge includes determination of whether complaint presents justiciable controversy and whether plaintiff has standing." Sharrow v Peyser, D.C.N.Y. 1977, 443 F Supp 321, affirmed 582 F 2d 1271.

The points of law expressed in Pine and Walker, cited by the attorneys for the Federal Home Loan Bank Board, are controverted in Sharrow and Mobil Oil Corp and

Young, above cited. Since there is a very substantial constitutional issue presented in the instant case, the court should not consider Federal Defendant's combined response, as filed January 11, 1980.

"Cramer", defendant-mortgagor has standing to sue the individual member of the Federal Home Loan Bank Board; to wit: Director and/or Official and/or Officer in Charge. Chase Savings v F.H.L.B.B., 269 F Supp 965, (ED Pa 1967) is applicable only to state regulated associations, and inapposite in the instant case. However, even a state regulated association may sue an individual member of the Federal Home Loan Bank Board.

FEDERAL JURISDICTION NOT LACKING

Section 1337 of Title 28 providing that - district courts shall have original jurisdiction of any civil action or proceeding arising under any act of Congress regulating commerce gave federal district court jurisdiction of suit for declaratory judgment and appropriate further relief * * * " Murphy v Colonial Federal Sav & Loan Ass'n, C.A.N.Y. 1968, 388 F 2d 609.

In three appeals consolidated for disposition to declare invalid the formula set forth in merger agreement governing distribution of stock, and to substitute another basis upon which distribution would be made, the parties were Federal Home Loan Bank Board, a sue and be sued agency of the United States, Federal Savings & Loan Insurance Corporation, a sue and be sued Federal Corporation and agency of the United States, appellants, versus Sidney Elliott, Winnie Buckling, Mabel Fergus & John (Beans) Reardon, individually as shareholders Protective Committee, and John Does 1 through 70,000. In previous litigations for declaratory relief, see Elliott v Federal Home Loan Bank Board, D.C. Cal 1964, 233 F Supp 578, and where the jurisdiction

was not challenged under Administrative - Procedure Act, Sec. 10, 5 USCA 1009 (subsequently amended) where the court held that the Federal Home Loan Bank Board did not have uncontrolled discretion and that Federal Home Loan Bank Board actions are judicially reviewable. (12 USCA 1462 (d), 1464 (d). Those cases involved a merger agreement and dissolution of federal associations and/or conversion to State savings - and loan (12 C.F.R. 564.4), the court holding that the parties were not estopped from challenging validity of agreements. (reversed and remanded, 386 F 2d 42, cert den 88 S Ct 1260, 1261, 300 US 1011, 20 L Ed 2d 161.)

In Milberg v Lawrence Cederhurst Federal Sav & Loan Assn., 496 F 2d 523 (1974) the 2nd Circuit Court of Appeals, reversed judgment dism issing action for lack of subject matter jurisdiction and remanded, holding that a violation of regulation 12 USCA 1461, et seq., was sufficient to invoke jurisdiction of the federal court under act giving jurisdiction to district court of any action arising under any act of Congress regulating commerce. (28 USCA 1337)

In an action to enforce regulation of Federal Home Loan Bank Board involving internal affairs of association, City Federal Sav & Loan Assoc. v Robert P. Crowley, Sr., et al (DC Wis 1975) the federal court sustained original jurisdiction under 28 USCA 1331 (a), 28 USCA 1337, as to subject matter jurisdiction, and said,

> "Question of whether a statute or administrative regulation permits maintenance of private cause of action turns on whether provision

allegedly violated was designed to protect complainant from injuries of which it complains and whether implication of such cause of action is in furtherance of provisions' purposes." (12 USCA 1464, 28 USCA 1337) City Federal Sav & Loan Assn. v Crowley, 393 F Supp 644.

Further, in the case above-cited, the court held that the federal district court has subject matter jurisdiction of actions arising under federal common law; and questions of fact are not resolvable on a motion to dismiss.

In Beck v Athens Bldg. Loan & Savings Assn (1974 DC Pa) 65 F.R.D. 691, alleging unlawful combination or conspiracy in violation of Sherman Act 15 USCA 1, et seq., (conspiracy to shift from "capitalizing" to "escrow" method of holding funds collected for taxes and insurance) the court sustained pendent jurisdiction over state claims, and in view of considerations of judicial economy and convenience pendent jurisdiction would be exercised. In that case, on granting mortgagor's motion to file amended complaint (Federal Civil Procedure, Rule 15 (a)) obligating the adding of new cause of action, holding that, "pendent jurisdiction, in the sense of judicial power, exists whenever there is a claim arising under the Constitution, the Laws of the Un ited States, and Treaties made (US Const. Art III, sec 2).

Moreover, where state and federal claims at issue are derived from "a common nucleus of operative fact," accordingly, the federal court has the power to take jurisdiction over the state claims. The allegation of a common-law restraint of commerce (prima facie restraint in the restrictive covenant of the instant mass mortgage contract) can properly

be appended to the Sherman Act claims. Beck v Athens, supra.

On the threshold question of whether - federal district court entertained jurisdiction properly based on state common law, the United States Supreme Court held that the district court properly entertained jurisdiction of the claim based on state law -- see United Mine Workers of America v Gibbs, 383 US 715, 86 S Ct 1130, 16 L Ed 2d 218 (1966) PP 721-729 --- in favor of exercising pendent jurisdiction over the state claims --- and where retention of jurisdiction over the state-law claims will not involve a needless decision of state law --- permitting conclusion that entire action before court comprises one "case" -- P 725 --- pendent jurisdiction is a doctrine of discretion justified by judicial economy, convenience and fairness to litigants -- P 726 --- and that the District Court did not exceed its discretion in exercising jurisdiction over the state law claim. PP 727-279 -- (asserting unlawful conspiracy and boycott to interfere in contracts).

It is respectfully urged that jurisdiction is not lacking, and that, indeed, jurisdiction may be taken under multiple choices, as to the Federal Home Loan Bank Board, individual members, diversity and otherwise, and in the sound discretion of the court. Some meritorious programs produce wrong results. Regulatory whims are usually made or promulgated by unknown persons, exercising patterns of abuse. It always gets complex when the issue of fairness ultimately comes into the picture. "The play is the tragedy "Man", and its hero the Conqueror Worm." Our Lord, Jesus, threw the money-changers out of the Temple --- and no one objected.

For the reasons stated herein and in defendant-mortgagor's("Cramer's) prior pleadings subm itted and incorporated herein as if more fully set forth, removal of the state case is appropriate. Therefore, the motions to remand and to dismiss should be denied.

Respectfully submitted,

/s/ Virginia Cramer,
defendant-mortgagor in
wrongful foreclosure,
In Pro Per

Dated:
Jan 16, 1980

Filed September 18, 1979 No. 9-72789
U. S. District Court

Letter from Corbin Davis (Supreme Court) re: motions pending in Supreme Court are to be deferred until U.S. District Court makes ruling. DD 9-19-79

TRANSCRIPT
Filed February 5, 1980 No. 9-72789
U. S. District Court

MOTIONS

PROCEEDINGS HAD before the HONORABLE ANNA DIGGS TAYLOR, District Judge, United States District Court, 228 Federal Building, Detroit, Michigan, on Thursday, January 17, 1980, commencing at or about the hour of 9:00 a.m.

APPEARANCES:

VIRGINIA CRAMER, Plaintiff,
Appearing IN PROPRIA PERSONA,

WILLIAM R. McFADDEN, ESQ.,
Defendant, Appearing in
PROPRIA PERSONA,

ABEL SELBURN, ESQ., Defendant
Appearing IN PROPRIA PERSONA,

HAYWARD DRAPER, AUSA, for
SAMUEL BEHRINGER, AUSA
Appearing on behalf of Federal
Home Loan Bank Board,

GEORGE WELLER, Assistant
Attorney General, Appearing on
behalf of the Members of the
Michigan Supreme Court

JOHN JACOBS, ESQ.,
Appearing on behalf of Defendant
Allen Counard, Esq.,

WILLIAM THORPE, ESQ.,
Appearing on behalf of Metro-
politan Savings Association,
et al.

Official Court Reporter: Lena Van Smith,
CSR, CP, RPR.

Detroit, Michigan
Thursday, January 17, 1980

THE CLERK: Case Number 9-72789, Virginia Cramer versus Metropolitan Savings, et al.

THE COURT: Good morning, ladies and gentlemen. Today's motions will be entertained by the Court in the following order. I'm advising you now, so counsel can govern your attendance accordingly. The first motion of William McFadden on the judg- of pleadings or summary judgment. Second, Abel Selburn on the judgment of pleadings or summary judgment. Third, Federal Home Loan Bank Board, to dismiss. Fourth, members of the Michigan Supreme Court to dismiss. Fifth, the motion of Defendant Allen Counard to remove and/or

and/or abstain. Sixth, the motion of Metropolitan Savings, et al, to remand. Seven, Metropolitan Savings, et al to dismiss.

The Court will entertain no more than 15 minutes of argument on either side of each motion.

Mr. McFadden.

MR. MCFADDEN: May it please the Court, William McFadden. I am an attorney. I did have the occasion to represent Ms. Cramer, the Plaintiff in this case, at a very late stage in the proceedings.

At the time that I entered this case, the matter was pending before the Michigan Supreme Court and I came in originally in an advisatory capacity, she having indicated to me at that time she was having difficulty in finding this counsel, and that this case had been pending or certain other cases thereto have been pending for considerable periods of time.

I did advise Mrs. Cramer--that I did suggest certain causes of action to her, including the possibility of an action in the Federal Court. I did in fact draft such complaint for her and -- decided that that time she did not want to proceed on that complaint that I had filed and this suit has arisen because of that.

I state that so the Court will be advised, and I will be on the record as showing what my involvement was in this matter.

Mrs. Cramer filed the suit naming several Defendants; all of whom are present in the court today. In her complaint, she makes certain allegations

or conclusions rather -- as opposed to allegations of fact. Certain conclusions as relates to conspiracy, alleges that I conspired with certain other attorneys to in some way violate or affect her rights.

I submit to the Court, I submitted in the answer that I had no contact with any of these other individuals; that all of the actions she referred to occurred prior to the time that I began any representation whasoever; that the statements that she has made in her complaint are raw conclusions of fact. Raw conclusions, they are not supported by any allegations of fact, whatsoever.

My motion is relatively brief. I will not repeat it to the Court at this time. I have set forth a paragraph. Therein I have alleged that in none of those paragraphs that she makes a single allegation supported by fact which would be proper, a proper basis for this complaint against me, and, therefor, I move the Court at this time to dismiss the action as it relates to me.

I have nothing further to say, Your Honor.

THE COURT: Did your motion not also speak to jurisdiction?

MR. MCFADDEN: The motion -- I beg pardon, speaks to jurisdiction in that there is no diversity of citizenship and no other basis that I can find for this action against all of the defendants, and especially against me.

THE COURT: Thank you, Mr. McFadden. Mrs. Cramer, do you wish to respond.

MS. CRAMER: Well, just very short and briefly in answer to Mr. McFadden's oral argument. The allegation isn't that there was a communication conspiratorily, effort between the attorneys; it's just that the attorneys, per se, it appears to me, want to pursue the issues on entirely the wrong road.

Mr. McFadden, for one thing, insisted that it was a mutual covenant, although as the mortgage -- Court understands, in question, is unenforceable; how can it be a mutual covenant if it's unenforceable.

So it just seems as though the attorneys, including Mr. McFadden, that I have engaged the services of, approached the whole case the wrong way, and -- in my opinion.

Diversity, it is not required in all cases. I think Mr. McFadden is erroneous in thinking that diversity, in his case, or him being a defendant is required. I don't think diversity is required.

I didn't hear a lot of what Mr. McFadden said. That's what I caught; that's my response.

Thank you.

THE COURT: Maybe, Mrs. Cramer, maybe you would hear more if you would sit at the front end of your counsel table instead of the rear.

MS. CRAMER: I've got a lot of loot to move.

THE COURT: Well, better that you move than not be able to hear.

MS. CRAMER: Well -- thank you.

THE COURT: Is Mr. Selburn here? Are you arguing on behalf of Mr. Selburn? Are you Mr. Selburn?

MR. SELBURN: Yes, ma'am.

THE COURT: Proceed.

MR. SELBURN: May it please the Court, I just wish to make a few brief statements to supplement an argument I presented in the motion.

Mrs. Cramer came to me in the fall of '68. I appeared with her in court. I prepared pleadings which copy was furnished to her. And filed with the Court, though, there was no record of a filing. I can't imagine that she was prejudiced. We came to a parting of the ways in early 1970, and since that time, I have not been a party to this action. At our parting of ways , a grievance was filed. There was investigations and a hearing and the matter was disposed of. The only contact that I have had with any of the other attorneys named in this matter, I met with Counard in a diverse action, not relating to this case in any manner. I don't think we ever met, personally. Mr. McFadden and I talked after service of this process and according to Mrs. Cramer, each of the attorneys used the wrong approach.

If there was error of judgment, and I deny that, these are not grounds for a case in the Federal Court, whasoever. The grounds would be based on the diversity of citizenship. There is no diversity.

The claim of conspiracy; there is no conspiracy. She pleads conclusions rather than facts. She says we failed to pursue the issues after I was dismissed. I believe Mr. Counard took this matter through the court, including the Court of

Appeals and the Michigan Supreme Court.

So, I, myself, feel that there's no role in this matter. I understand that there have been other cases filed against other attorneys in this matter in the Wayne County Circuit Court and there's a motion to remand. I'm not a party to that. I don't know that I'm a party to this; and I respectfully move the Court to dismiss.

THE COURT: Thank you.

Mrs. Cramer.

MRS. CRAMER: Your Honor, it's true that Mr. Selburn was the first attorney that I hired on this and that was because of the insistence of the Wayne Circuit Court Judge who was first assigned in this case. I was not permitted to be heard without an attorney. And, so, almost immediately, I did hire Mr. Selburn. Mr. Selburn made one appearance in that case, on September 6, 1968, for oral argument.

As the transcript shows, before the Honorable Thomas J. Murphy, Circuit Judge of Wayne County, who is now deceased.

Mr. Selburn filed absolutely no pleadings. It's true he did furnish me with copies of pleadings, but none were filed in the Court.

Subsequently, I filed a grievance against Mr. Selburn with the State Bar of Michigan. The Grievance Board. And they were very cooperative in helping me to regain or recover monies that I had paid Mr. Selburn.

I had checked the docket in the Wayne Circuit Court. There were no docket entries of pleadings purportedly to have

been filed by Mr. Selburn on my behalf.

The Defendant Metropolitan Savings and Loan and their attorneys never received any copies of any pleadings. They were never served. There's nothing on the record in the Wayne Circuit Court of any pleadings filed by Mr. Selburn.

I don't think they lose pleadings that easily in the court.

And here again, I don't think diversity pertains to Mr. Selburn. And, as -- I'm not a lawyer -- sometimes I can't tell the difference between fact and conclusion. What -- Whatever it is, I think I responded to Mr. Selburn's pleadings in this case very thoroughly and I am alleging that he deceived me, claiming to represent me, claiming to have filed pleadings, and while I was paying him money, he was not representing me, because there were no pleadings filed in the court.

And as a matter of fact, I was left to my own resources and how I could save my property. And it was a very traumatic thing, with me, at that time. I'll never forget it.

Well, I realize that Mr. Selburn may have had other cases, as a matter of fact, he was representing another lady that I knew. But Mr. Selburn had actually ignored the case for all the time that he was supposed to have been managing it. Which was almost 18 months. And I was going to Mr. Selburn's office frequently to pay him more money. As the record shows, nothing has ever been filed by Mr. Selburn. And all that time, I was being led to believe by Mr. Selburn that he was handling the case. On my behalf. But which he wasn't.

— I'm pretty upset -- this whole thing -- I think from the beginning the faults lies initially in how the case was handled and it just seems to snowball all the way along the line and it just seemed to me that -- that the attorneys that I hired after that just covered up for the initial misrepresentation.

And this case has been going on for 12 years. Almost 12 years.

When I filed the grievance against Mr. Selburn with the State Bar, I showed the attorney at the State Bar the pleadings, that copy of which was a cover letter that Mr. Selburn had sent me and I think it was conclusive right there, you know, after the case was about 18 months old. That I went to the Grievance Board of the Bar Association. And I think it was confirmed by the State Bar that there were no pleadings filed by Mr. Selburn; none whatsoever. Not one scrap of paper. Thank you.

THE COURT: Thank you.

Federal Home Loan Bank.

MR. DRAPER: Your Honor, my name is Howard Draper, Assistant United States Attorney instead of Mr. Samuel Behringer who is the instructor this week at the Attorney-General Trial, Advocacy Trial in Washington.

Mr. Behringer has filed several pleadings, probably the most extensive of which was filed on August 31, 1979, which is the motion to dismiss with a brief supporting it. I don't think there's any need to go over the various different grounds that are set out in that brief which I assume this Court has had a chance to look at. I might make two basic points.

First of all, in the brief, there is an argument made which does, as to this particular Defendant, completely dispose of the matter, as well as other argument, as well as cases. The Plaintiff cannot sue the Federal Home Loan Board. This Court --

THE COURT: I'd like to hear about the jurisdiction.

MR. DRAPER: The second point concerns jurisdiction. I might add, in that regard, that the Court can, under Rule 12(h), can raise on its own motion. That is not fatal to the Court dealing with the matter of jurisdiction, itself. However, I believe most of them have raised various jurisdictional arguments. When we're dealing with the Pro Se Plaintiff who feels wronged and a Pro Se Plaintiff who has some misconceptions about what the court system can do, maybe have some fantasies about it, you know, that are very real to her about what is going on to her and she's being wronged and somehow the courts are going to step in and perform magic or do something, and this happens a lot and I'm sure you're aware and this case comes up a lot, particularly with the United States and sometimes defendants. It's hard to deal with jurisdiction, because there's so many technical flaws involved; it's hard to get a handle on it.

The basic flaw that is--behind a whole host of technical flaws that Mr. Behringer sets out is that the Plaintiff can't remove an action. This Plaintiff has run an action all the way through the United States Supreme Court, through state court systems, run another action all the way up, basically same thing, to the State Supreme Court, and then -- hard to know why -- I cannot fathom why I -- she pleads her

lawyers were, the State Supreme Court-Judges were wrong -- decides for whatever reason, maybe the Federal Court will help out, remove it.

We can argue this in terms of the statute which says clearly, something can be done by defendant in the action. But we're dealing with the basic problem here. She can't remove her own action. Certainly, you can't remove an appeal. She was appealing a State Court judgment. This Court has no jurisdiction to review a State Court judgment. That jurisdiction is granted to the Michigan State Supreme Court. And if it is wrong, to the United States Supreme Court.

She has a Federal review; she doesn't have a Federal review in this court -- possibly, somehow, this action that she filed, a new complaint in this court -- but she didn't file a new complaint in this court. She didn't purport to. She purported to remove several complaints filed, several different things. I know Mr. Behringer set out two complaints,-- really one complaint and a second complaint is another complaint with several pages missing at the end, in this Court.

Again, we have -- at that point, we have really a fundamental thing going on here. We have a whole bunch of new defendants who have been added to removal action about -- I believe -- and I -- the reason I don't want to go beyond that, we at that point get into a never-never land of technical problems. Technical procedural problems. Mr. Behringer has set out several of them in his briefs in terms of -- I mean, basically of how you look at what's done there. Could be service problems; a lot of different things. I think for this Court's purpose,

it's enough for this Court to know that it does have limited jurisdiction; that there is a burden on the plaintiffs in all actions to plead jurisdiction and to show jurisdiction under -- unless the Plaintiff can point to a particular statute that gives the Court jurisdiction in Federal Court, then they have jurisdiction. In State Court -- but not in Federal Court.

Furthermore, unless they can show different statutes that point out to sovereign immunity -- this Plaintiff has -- the only statute has been pointed to here, really, considering jurisdiction, that would take the action out of the Michigan Supreme Court, is the concept of removal, and that statute will not give Federal Court jurisdiction over an action that was in the Michigan State Supreme Court.

And concerning treating this as a new action against all these new Defendants, there are not only technical problems concerning service, of process, and other technical problems to bring such an action, but she also does not have a claim against any of these Defendants, even if she had brought a new action.

As to the Federal Home Bank Board, it's not exactly clear what this Federal action is she is bringing this action under. What statute is supposedly being where she's been wronged. You heard the State Defendant and I'm sure you'll hear more talk about diversity.

In our case, there are problems, basically -- and I think really the basis the Court has to deal with it in there is very clear case law. She cannot sue the Federal Home Loan Bank Board on any basis, on any statute. I think that

As a result, unless this Court wants to pursue a particular angle on it, on which I'd be glad to, I think it's the time to clear it up, it's not doing the Court any favor and the Plaintiff any favor to go on and on and on and drag more lawyers in and in, an in. I think we ought to deal with it.

THE COURT: Thank you, counsel.

Mrs. Cramer, do you wish to respond?

MS. CRAMER: Your Honor, I would say to the Court, that the Federal Home Loan Bank Board are indispensable parties in this issue. And the statute that I rely on is dealing with restraint of commerce. Under the anti-trust laws. I think I've been quite blunt in my pleadings, that they encourage the widespread abuse of illegal contracts. That's the stores in which the mortgagee lending institutions claim that they're bound by Federal Regulations to require escrow. It's mandatory. Lending institutions make that very clear. So the Federal Home Loan Bank Board is - involved and perhaps they're not responsible for this allegation that they're or whatever that they, lending institutions claim that they're bound by, Federal - Regulations to require escrow as a mandatory thing. So the Federal Home Loan Bank Board actually is an indispensable party, because that's where the issues stem - from, is in the Code of Federal Regulations promulgated by the Federal Home Loan Bank Board dealing specifically with so-called escrow funds paid on a mortgage contract.

I received a pleading on January 15 which was dated, filed in this court on January 11, and in this short time, I attempted to respond in opposition to it.

And you'll have to forgive me -- I get so angry in this whole thing at times, and it comes out in my pleadings -- our Lord Jesus, threw the money-changers out of the temple, and no one objected -- I don't know why the Federal Home Loan Bank should object. And as far as an individual suing on -- well, I guess it's called a private action or private interest, against the Federal Home Loan Bank Board, I think I made that clear in my pleadings. Frankly, I can't find that particular one right now -- maybe it I search for it while somebody is speaking.

But, also, to the extent of which, in promulgating the Code of Federal Regulations, that the lending institutions rely on as their source, if that's the nub of the issue, then the Federal Home Loan Bank Board cannot escape the fact that they are an indispensable party.

It was my impression and I've been told for the last 25 years that anybody can sue anybody. 'Cause at times I wondered why I was sued. And that was just a broad statement that I got from lawyers down the line. Anybody can sue anybody. I think possibly, in what I've tried to draw out to the Court in the several cases cited, the Federal Home Loan Bank Board has been sued by individual parties.

I show cases here in this hurriedly prepared memorandum shere -- I'm looking for it, Elliott v Federal Home Loan Bank Board, and those were individual people. So they sought to -- declaratory relief.

Seems to me, in reading that case, in the previous litigation on that same case, jurisdiction wasn't even challenged and it's possible that they relied on the Administrative Procedure Act, Section 10, 5 USC(a) 1009. But not being an expert in this, I can't say for sure.

But I've also pointed out to the Court in the hurriedly prepared memorandum that the threshold question of (sic, jurisdiction) the Federal District Court could entertain jurisdiction properly, and believe me, I don't know everything that is underlying in this case, but it seems to me as though the attempt is being made to slough it off back to the State Court where the State Court has already resolved the issue. Based on the State common law.

And I'm citing United Mine Workers of America v Gibbs, that's 383 US 715, where the United States Supreme Court ruled in favor of exercising pendant jurisdiction over State claims, and where retention of jurisdiction over State law claims will not involve a needless decision of State law; permitting the entire action before the Federal Court. Just based on the one, one short premise of the evidence is going to be the same. The evidence is — not going to change under any circumstances. And where it comprises one case and where the evidence will remain the same, — for whatever issue is before the Court -- and it's -- it seems to me that pendant jurisdiction is a doctrine of discretion, justified by judicial economy, convenience, and fairness to the litigant.

And I'm -- I'm very adamant in my belief that the Federal Home Loan Bank Board is an indispensable party; otherwise an issue will never be resolved, never, not for an eternity.

I sought injunctive relief or suggested to the Court that an injunction is proper. But not to enjoin and restrain them from performing that they're supposed to be performing, but to enjoin them and restrain them from refusing to perform issues, cease and desist orders, and so that an affirmative action which I think

should be compelled by the Court. That's why I brought the Federal Home Loan Bank Board into the case from the beginning in the Federal action. They were not parties to the State action.

And also, as I recall, I don't know whether it's proper to ask counsel for the Federal Home Loan Bank Board, but it seems to me, in my search in the last few days, that -- that the Federal Home Loan Bank Board, by act of Congress, has been subjected to numerous reorganizations. I ran across number 1 and number 3 reorganization. I looked for number 6, which I think the attorney who prepared the pleadings, other than this gentleman, Mr. Samuel Behringer, just touched briefly on whether or not the Federal Home Loan Bank Board is a suable independent agency, but I think with the -- with the reorganization that occurred in that second session of Congress in 1966, that they are now a wholly owned government corporation, of which the Federal Home Loan Bank Board is part of.

I think the way the amended statute reads is that the Federal Home Loan Bank Board is included in that wholly owned -- that's w-h-o-l-l-y, not h-o-l-y, government corporation. It also includes the Federal National Mortgage Association.

I can submit a brief on this.

It's just that I ran across it in just the last couple of days and I'm pretty sure that's correct. And whatever, whatever the position they were prior to 1966, and where there's -- I have cited case law here where they are an entity that can be sued or can sue or be sued; in the -- in that amended statute enacted by Congress, subsequently in the early part, I think,

May of 1967.

Congress also clarified it, that inferring that whatever position the Federal Home Loan Bank Board was before 1966, it didn't change after 1966.

So I submit something more, you know, more definite in writing -- may I, please?

THE COURT: I don't think that will be necessary on this point. I think your time has run on this motion.

MS. CRAMER: Thank you.

THE COURT: Members of the Michigan Supreme Court, Motion to Dismiss.

MR. WELLER: Your Honor, my name is George Weller, Assistant Attorney General, representing the members of the Michigan Supreme Court. We have to remember that this dispute is basically between Mrs. Cramer and Metropolitan Savings and Loan Association, over payment of escrow account and subsequent foreclosure and then there was a redemption. Various motions have been made. One is the lack of jurisdiction by this Court, because Mrs. Cramer seeks to reverse, void, or correct the decisions of the Michigan Supreme Court that have been issued in 401 Michigan 252.

Well, what she's really seeking is appellate review of the Michigan Supreme Court; and this Court does not have appellate review of the Michigan Supreme Court. That is the United States Supreme Court. Cert was sought and denied.

Insofar as she seeks damages, of course -- justices were acting in judicial capacity and they would be immune under Stump

v Sparkman.

In addition, we have Collateral Estoppel question of fact that was put in issue; there's been a final judgment and so--she's trying to raise a dispute against --.

The last matter is this question of scandalous matter. She has asked to have the Michigan Supreme Court restained and enjoined from rendering decisions and opinions due to mental disability of the justices. She has said that the justices are mentally disabled; that they border on insanity; they condone fraud, they have no regard for the security of the State; and they are voluntary advocates of misconduct and fraud. That's totally scandalous.

So, for lack of jurisdiction, immunity, Collateral Estoppel, and scandalous matter, the justices ask that this matter be dismissed.

THE COURT: Thank you, counsel.

Mrs. Cramer.

MRS. CRAMER: I can't find the -- my folder on the Michigan Supreme Court, so I'm talking without any material here in front of me in writing. Nothing. I -- when I prepared those pleadings, I was hotter than a pistol under the collar because of the certain instances that -- incidents that occurred between Mr. McFadden and myself. I also amended, subsequently, my pleadings, that I don't -- I don't mean a reversal, I need a reformation of that decision. I'm not familiar with how to do it, but I'm going to keep trying, whatever it is.

There are false reportings in those decisions. False facts. And I don't think that my pointing out that the facts are false are scandalous. I haven't used any dirty words in the pleadings. Not yet.

My feeling about that decision is, that perhaps as a lay person, I don't understand it, but at the same time, I think it's a crucial thing to experience, to see all these false facts in an opinion, and a person just thinks, oh, my gosh, we've got a crook in court. We've got crooked judges. Crooked justices. That's a reaction.

I'm being very honest here because I never learned to be any other way. The facts are wrong. I pointed that out in detail in my petition, Writ of Cert to the United States Supreme Court, which was denied.

The denial petition for Writ is not an expression of any opinion; so it means nothing. I don't think that the denial of the petition of Writ of Cert should be considered an Estoppel of any sort.

If I have another road to go, another recourse, eventually I may have to get back up to the United States Supreme Court, and I hope I'm in the position to give them a big earful. I just don't know how a decision can be properly written with false facts. And that's what it comprises of. And if -- I don't think that that should be termed as scandalous in the same way that it could be stricken from the case. It's all relevant. It is all a related instance or incident or consequence to the whole issue and there's really just one issue, a wrongful foreclosure; and that's how

it started.

And other than that, I'll stand on the written pleadings that I've submitted to the Court.

THE COURT: Thank you.

MRS. CRAMER: thank you

THE COURT: Mr. --

MR. JACOBS: John Jacobs, on behalf of Allen Counard. Your Honor, this is for us what amounts to attorney malpractice action. It has been in litigation, an act of litigation in Wayne County Circuit Court. Mr. Counard is one of the lawyers appearing here today, who at one time or another represented Virginia Cramer in the matter in some fashion.

Like the other lawyers, Allen Counard has been sued and we have made a motion for remand of these pleadings and to request the Court to abstain until the Wayne Circuit case has been adjudicated against us. We think that frankly for us the most appropriate response.

I am in complete agreement with all of the other defense motions I've heard today and anticipate hearing after me. We join in the motions and I take it that in fact -- I take it, on the merits of them, that the -- they are all correct; I don't see anything frankly that I can indicate to the Court that anything erroneous about any of them.

My motion is filling out the procedural gap that I didn't see the other Defendant attorneys raising, technically, on the record; there's no motion to remand. Insofar as the case is concerned against

those Defendants, that has -- have as yet not actually gotten their dismissal in the Wayne County Circuit Court action; that's the reason for motions for remanding.

This action has been pending in State Court for 11 years. Against us for two years. It has been adjudicated. This would now be the third piece of litigation arising out of this incident. It -- I perceive this case to be like so many -- like a line of so many smaller and smaller mirrors and yet although the case may become infinitesimally small, it will always be around. I think that's an appropriate reaction for the Court. I think it's my job as an attorney to say so.

It strikes me that, insofar as the non-governmental State Defendants are concerned, I'm taking that to the justices of the Supreme Court, it's apparent that as to all of these attorneys I see here, for example, Mr. MCClintock, I see the law firm Richards & Denyer, that McClintock -- I take it on behalf of these attorneys, that have been served, McClintock, Mr. Richards, Mr. Denyer, the McClintock firm, Michael Doelle and William Thorpe, and Abel Selburn, Bill McFadden, I think that's all the attorneys, Your Honor, that this Court is aware, this is essentially 1983 or it is by the third parties, a 1983 action. We are private attorneys. These individual attorneys I have named are private attorneys; no State action against those lawyers.

This lawsuit is ill-advised, under 42 USC 1983 and the provisions of 28 USC 1343. Does not have applicability. As is apparent.

Most interesting statements I heard Mrs. Cramer make, to say, there is an

attempt to slough this off, direct quote if I may, attempt to slough this off to the State Courts where it has already been resolved.

That is excruciatingly true. It has been resolved several times. Granted, not to Mrs. Cramer's satisfaction. But that is no reason for this litigation continuing 11 years, over and over and over again.

My motion is a very narrow motion. It's asking the Court to simply, as to my client Counard, the only one I represent, that we have a matter in Wayne County Circuit Court that is pending there; it is also of the attorney negligent malpractice causes of action that this Plaintiff claims against my client Allen Counard -- more than that, she cannot have -- he's a private attorney, there is no State action. As such to the extent that all other Defendants have moved for dismissal; I make that motion, also. I suggest, also, that these private attorneys -- maybe I'm presumptuous, but I think all would agree with my theory, that all of these private attorneys, to the extent that they are, or are not named, this matter is pending in State Court, or has been adjudicated there and Res Judicata affects us there.

I think Mr. Selburn and Mr. McFadden are not named in that case, so I don't think they join such a motion. We are named and, say this matter is pending elsewhere, and for -- a good portion of this case had been adjudicated elsewhere.

Under those theories, Your Honor, and pursuant to my brief, which was filed with the Court sometime back in July and August, we make our motion for dismissal,

based upon the abstention doctrine of the United States Supreme Court, the doctrine as in Huffman v Pursue, in the United States Supreme Court.

Any questions, Your Honor?

THE COURT: No, counsel.

Mrs. Cramer.

MRS. CRAMER: Your Honor, because it just flitted through my mind, right now, that Federal Home Loan Bank Board seems to make a big thing out of what they are trying to term as two complaints. I explained that to Mr. Behringer over the telephone. I -- before he filed his response to my motion. I told him I didn't have a stapler that was heavy enough to go through all of the papers so I just divided them in two sections. It's --

THE COURT: Thank you, Mrs. Cramer. You may go on with this Defendant's motion.

MS. CRAMER: All right. Anyway. Mr. Counard was the second attorney that I hired and it seems to me as though it's a very irregular situation where you never get a day in court. I think that that's possibly the primary reason why the personnel of the courts, mainly the judge the -- want a litigant to hire a lawyer, so that presumably the case will be handled properly. I'd like to go on that presumption, anyway, but I've never been heard. I've never been allowed to testify as to the foreclosure matter. Nothing. Not one word. At anytime that I made an attempt to mention even the word, foreclosure, it was objected to all the way down the line.

Seems to me, from the research that I've done, it also -- it also hinges or stems back to the first order that was entered by the Wayne Circuit Court as a result of which, where I was misrepresented by Mr. Selburn. And then Mr. Counard, I feel did not take the proper steps to remedy that situation, because we're always faced -- Res Judicata, everything was Res Judicata. Couldn't be heard on anything. Metropolitan's defense at every step along the way was Res Judicata. I've never been heard. I've never had a day in court.

I pointed out in my pleadings, specifically where I think Mr. Counard was negligent in representing this case and he, too, argued on the issue that it was a mutual covenant. The mortgage contract was a mutual covenant.

Now, the Michigan Supreme Court has not even indicated that it's a mutual covenant and, like I say, I'm sure it's because I'm not experienced in the law that I'm -- but I'm doing the best I can in my research; and I do feel, now, subsequently, and since what I have researched, after the Michigan Supreme Court decision, more recently is that I have an anti-trust defense. And I feel as though that is the way the case should have been handled from the beginning, on the validity or illegality of the contracts; not as a mutual covenant or not as anything that was enforceable against the mortgagee, because it isn't enforceable against the mortgagee.

It may be termed as a unilateral contract, but at the same time, from what I can gather through my research, as I say, I feel as though a definite anti-trust defense. And this is the way I think

it should be pursued in the Federal Court. And whether I'm competent to do it, I guess not, but I'm going to try real hard. Anyway I can. Even if I have to get back up to the United State Supreme Court. If I have to crawl up there. I telephoned them many times.

Well, I'm sorry to get emotional about this. I really am.

Thank you.

THE COURT: Defendant Metropolitan Savings Association.

MR. THORPE: Your Honor, William Thorpe for Metropolitan Savings Association and McClintock, Donovan Carson and Roach and Defendant named as co-Defendants.

Your Honor, first of all, as to the Defendant Metropolitan Savings Association who was a prime Defendant in the case, it's important to realize that this case started in 1968; was litigated by Mrs. Cramer through some 10 years in the State court. I have attached copies of pertinent appeals, opinion, copies of the Michigan Supreme Court matter, it ultimately went to the United States Supreme Court; Cert was denied. Shortly thereafter, Mrs. Cramer filed substantially the identical complaint in the State Court.

MS. CRAMER: Objection, Your Honor, please. I'd like to enter a standing objection to anything that Mr. Thorpe says. It's been a problem for --

THE COURT: Mrs. Cramer --

MS. CRAMER: For all the years --

THE COURT: Excuse me. Mrs. Cramer, as counsel, he is entitled to argue his case just as you are entitled to argue.

MS. CRAMER: I think everyone, including the Court, appreciates it if Mr. Thorpe wouldn't latch off onto erroneous things.

You know, I think that's only been -- fear -- this situation in this whole case --

THE COURT: Mrs. Cramer, please be seated and permit counsel to conduct the argument; and for you to express yourself in response.

MR. THORPE: Your Honor, as I say, Mrs. Cramer filed substantially the identical complaint in the State Court. That complaint was essentially to the motion, predicated upon Res Judicata. The order was entered by Judge Farmer on September 8, 1978 dismissing Mrs. Cramer's complaint. She then took an appeal. And the matter now stands somewhere in the Michigan Supreme Court. She then filed this, alleging substantially the same facts, identical transactions, attempts to have the case in which she is obviously the Plaintiff removed to the court; convoluted reasoning in attemptin to say that she's the Defendant, is pure nonsense.

This case, if not dismissed, should be sent back to the State Court where it properly belongs.

As to these persons named under the heading, co-Defendants, McClintock, Carson, Donovan, and Roach, those persons represented those Metropolitan Savings Association during the course of litigation. By way of comment, Mr. McClintock is deceased. Mr. Doelle is no longer with the firm. Those persons represented

Savings Association. Essentially brought malpractice action in the second State Court case. Those persons never represented Mrs. Cramer. Never would represent Mrs. Cramer; and by the same order issued by Judge Farmer, those persons were dismissed.

She included them in this action. The matter belongs in State Court where it should be sent.

Your Honor, we request that the matter be sent back to State Court, or in the alternative, that it be dismissed.

By way of comment, I join in the other Defendant's motions that are properly brought.

THE COURT: Just a moment, counsel. I have a question. There are two motions filed by Defendant Metropolitan Savings Association. Are all the parties participating in the motion, in the motion to remand that are participating in the motion to dismiss and vice versa?

MR. THORPE: Yes.

THE COURT: Thank you.

Mrs. Cramer.

MS. CRAMER: It's always been just one action, Your Honor, on the foreclosure. And as a result of which, since I've never been heard, never had a day in court on the foreclosure, the case has snowballed into other things, including the attorneys that I hired, and I think a person has a right to sue another attorney that didn't represent that person, that certain person, if they can point out where fraud has been perpetrated upon the

court.

For one thing, the first order that was entered in this case by -- as I said before, Judge Thomas J. Murphy, now deceased, it was an order dissolving the temporary restraining order; it wasn't even a final order that could be appealed, from what I've learned since. I think I'm correct on that. And at the same time, it purportedly -- mortagor Virginia Cramer to be in default of her mortgage. No default shown, no exhibits were entered into the record; no identification, whatsoever. And then in the Michigan Supreme Court, the decision suddenly it became a judgment. As a finding of default. I don't know how the reportings of the Michigan Supreme Court are affected. I have no idea, whatso ever. But at the same time, there had been the false facts made by Mr. Thorpe in his pleadings, in his brief, all the way down the line, which appeared in the Michigan Supreme Court. And I have alleged that the Court is condoning this fraud.

Could I ask, could the Court ask Mr. Thorpe how that order for (sic, dissolution of) temporary restraining order became a judgment in the Supreme Court decision which makes a big difference, you know, because it wasn't an appealable order. Except to the extent that Mr. Counard who was my second attorney ignored it completely, as well as Mr. Selburn ignored it completely.

Mr. Counard, at one point in the case, and I think he was the attorney on this case for approximately -- well, little less than two years at one point, he motioned the Court to strike Metropolitan's affirmative defenses, appearing in the pretrial statement. And on that motion to strike, Mr. Counard had inferred to me that it removed the adjudication of default.

In her mortgage. And it's the -- at the same time, there, it popped up in the Michigan Supreme Court decision as a judgment. And no attempt was made to even correct that order or remedy the situation. And that's probably why I've never been heard on this case. Never had a day in court. Never been allowed to testify as to anything pertaining to the foreclosure. Never.

Thank you.

And, oh -- I should mention, that I stand on my pleadings. Filed with the Court.

THE COURT: Thank you.

Have we heard the motions of all parties?

MR. THORPE: Yes, Your Honor.

MR. JACOBS: Yes, Your Honor.

MR. WELLER: Yes, Your Honor.

MR. DRAPER: Yes, Your Honor.

MR. SELBURN: Yes, Your Honor.

MR. McFADDEN: Yes, Your Honor.

THE COURT: The Court is ready to rule.

First, on the motion of Defendants William R. McFadden and Abel Selburn for judgment on the pleadings or in the alternative for summary judgment, Defendant Abel Selburn moves this Court for judgment on the pleadings or in the alternative for summary judgment, and Defendant William McFadden moves for judgment on the pleadings alone. Because of the similarity of

the arguments the Court will rule on their motions simultaneously as motions for judgment on pleadings.

It is well settled that Federal District Courts are courts of limited jurisdiction, hence, this Court cannot assert jurisdiction where there is none.

In the instant case, Defendant Selburn and Defendant McFadden allege this Court lacks jurisdiction over the subject matter of the lawsuit, because Plaintiff's complaint, on its face, indicates there is no diversity of citizenship, and there is none.

Mrs. Cramer and both Defendants are citizens and residents of the State of Michigan. Moreover, the Plaintiff's causes of action against the Defendants, reading the pleadings in the light most favorable to her, are for legal malpractice.

Therefore, the Court dismisses that part of the Plaintiff's complaint regarding Defendants Selburn and McFadden, in that the Court lacks jurisdiction over the subject matter, because there is no Federal question and no diversity of citizenship.

Will an order please be submitted within the next ten days to that effect.

The Defendant Federal Home Loan Bank Board's motion to dismiss Post-Removal additional Defendants and complaints and remand the original pleadings, the Defendant Federal Home Loan Bank Board has moved this Court to dismiss this action as to itself and the Michigan -- members of the Michigan Supreme Court. In sum, this Defendant alleges that Plaintiff has unilaterally and improperly added the Federal Home Loan Bank Board and the Michigan Supreme Court as parties to this action on filing her petition

for removal in United States District Court for the Eastern District of Michigan in contravention of State and Federal Rules of Civil Procedure. And where there is no jurisdiction of this Court.

The Court finds that this motion is well founded. Leave has not been applied for; nor granted by this Court to add Post-Removal parties to Plaintiff's lawsuit.

With respect to the Defendant Federal Home Loan Bank Board, the Defendant's motion is hereby granted and an order will be submitted.

The Defendant members of the Michigan Supreme Court have filed a motion on various grounds urging this Court to dismiss.

The Court finds that this Federal District Court lacks appellate jurisdiction over the Michigan Supreme Court and is therefore without jurisdiction to consider the particulars of Mrs. Cramer's allegations.

It is well settled that Federal District Courts are courts of limited jurisdiction. They cannot assert jurisdiction where there is none.

In essence, Mrs. Cramer is seeking to have this Federal District Court reverse, void, or correct the decisions of the Michigan Supreme Court published at 401 Mich 252, on the grounds that the justices are mentally disabled to render decisions.

The appeal for -- from that Court lies with the United States Supreme Court. Mrs. Cramer has sought appellate review of the Michigan Supreme Court's decision at the Supreme Court and that review was denied,

436 US 958; 98 S. Ct 3072, 57 LEd 2d 1123. The final judgment of the Supreme Court is conclusive on this Court.

Moreover, the Court further finds that Mrs. Cramer improperly joined the Post-Removal Defendant members of the Michigan Supreme Court to this action in contravention of both State and Federal Rules of Procedure for removal. The action is dismissed as to those Defendants and an order will be submitted.

Defendant Allen Counard moves this Court to remand this action to the State Court and/or to abstain on various grounds.

In support of this motion, Defendant Counard has indicated that Mrs. Cramer's petition for removal was improperly and untimely filed. 28 USC 1441 and 1446 articulate those actions which can be properly removed and the procedure for removal, pursuant to those provisions of law. This Court finds that this action was improperly removed to the Federal District Court.

First, Mrs. Cramer is the Plaintiff in the action alleging legal malpractice by Mr. Counard, which is pending in the State Court.

Second, a Defendant may remove an action within 30 days after receipt of service. Even if by some stretch of the imagination one could find that Mrs. Cramer were the Defendant in the proceedings against Mr. Counard, the Court must still find that the petition is untimely filed, in that more than 30 days had passed at the time of its filing. Further, there is no allegation of diversity of citizenship and no Federal question presented.

This Court remands the matter as it relates to Mr. Counard. And an order will be presented within 10 days.

As to the remaining Defendants, the motions filed by Metropolitan Savings Association, et al to dismiss the claim, McClintock, Roger Richards, John Denyer, McClintock, donovan, carson, and Roach, Defendants have moved that Mrs. Cramer's complaint be dismissed for lack of jurisdiction over subject matter on the grounds that the subject matter is Res Judicata and/or Collateral Estoppel.

Mrs. Cramer's complaint represents that this Court has jurisdiction under the Civil Rights Act 20 USC 1983. However, it is clear that Mrs. Cramer cannot use that Act to relitigate issues decided in State Court. Coogan v Cincinnati Bar Association, 431 F2d 1209 at 1211, in which the Sixth Circuit Court of Appeals said, "The Civil Rights Act was not designed to be used as a substitute for the right of appeal, or to collaterally attack a final judgment of the highest court of a State and relitigate the issues it decided.

Mrs. Cramer's proper recourse is to appeal to the United States Supreme Court, which she has done, and the United States Supreme Court has ruled upon Mrs. Cramer's petition for Certiorari.

This cause of action, therefore, is dismissed as to those Defendants, and an order will be submitted within 10 days.

Court is in recess.

(Proceedings ended at 10:55 a.m.)

Entered on January 17, 1980 No. 9-72789
U. S. District Court

ORDER OF DISMISSAL IN PART AND
ORDER OF REMAND IN PART

At a session of said Court held in the Federal Building, in Detroit, Michigan, on January 17, 1980.

PRESENT: Honorable Anna Diggs Taylor
U. S. District Court Judge

On the several motions of all the defendants and co-defendants herein, after hearing argument of all parties, and the court having reviewed the files and records in this case, and for the reasons as stated on the record, the Court being fully advised in the premises,

IT IS HEREBY ORDERED AND ADJUDGED that as to co-defendant, Allen Counard, this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan, and that as to all remaining defendants and co-defendants herein this action be and hereby is dismissed.

/s/ ANNA DIGGS TAYLOR,
United States District Court
Judge

Dated:
January 17, 1980

Filed February 8, 1980 No. 9-72789
U. S. District Court

NOTICE OF APPEAL

TO: MR. WILLIAM P. THORPE, Esq.
2150 Guardian Building,
Detroit, Michigan 48226

TO: MR. SAMUEL J. BEHRINGER, JR., Esq.
817 Federal Building
Detroit, Michigan 48226

TO: ABEL J. SELBURN, Esq.
Northland Towers West, Suite 407
Southfield, Michigan 48075

TO: MR. GEORGE H. WELLER, Esq.,
7th Floor Law Building
525 W. Ottawa
Lansing, Michigan 48913

TO: WILLIAM R. McFADDEN, Esq.,
1500 N. Woodward Avenue
Suite 111
Birmingham, Michigan 48011

TO: THOMAS M. O'LEARY, Esq., and
JOHN P. JACOBS, Esq.
1000 Guardian Building
Detroit, Michigan 48226

NOTICE IS HEREBY GIVEN that Virginia Cramer, Petitioner-Defendant (in wrongful foreclosure action), Petitioner-Plaintiff above named, hereby appeals to the United States Court of Appeals for the Sixth Circuit from the ORDER OF DISMISSAL IN PART AND ORDER OF REMAND IN PART entered in this action on the 17th day of January, 1980. This appeal is as of right. No bond is required by the court.

/s/ Virginia Cramer,
Dated: In Propria persona
February 8, 1980

Filed March 5, 1980 No. 80-1118
United States Court of Appeals
for the Sixth Circuit

NOTICE OF ELECTION TO DEFER PREPARATION OF APPENDIX

Motion Granted. Entered by the Clerk pursuant to Rule (4F) Sixth Cir. Rules

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Filed March 17, 1980 No. 80-1118
United States Court of Appeals
for the Sixth Circuit

Notice of Hearing, Motion for Stay Pending Review, Affidavit, Proof of Service

PLEASE TAKE N OTICE that upon the pleadings, the affidavits and all papers heretofore filed and upon the proceedings had herein, and upon the annexed affidavit of Virginia Cramer sworn to March 17, 1980, appellant-plaintiff will move this Court on Monday, March 24, 1980, at 9:00 A.M. o'clock in the forenoon of that day or as soon thereafter with the court's schedule at the United States Courthouse and Post Office Building, Cincinnati,Ohio, for a Stay Order Pending Review, suspending and staying litigation in the Wayne County Circuit Court, Third Judicial Circuit, Detroit, Michigan, as contained in the Order remanding to the Wayne County Circuit Court made by the Honorable Anna Diggs Taylor, U.S. District Court Judge, insofar as it prohibits plaintiff-appellant during the pendency of this appeal from properly preparing her brief and appendix on appeal, while the attorneys for co-defendant Allen Counard are attempting to further litigate in the Wayne County Circuit Court, Third Judicial Circuit, in the same case.

The reasons for the relief herein request-

ed are stated in the attached Motion for - Stay Pending Review, and as more particularly shown by the annexed affidavit of Virginia Cramer, Plaintiff-appellant.

/s/ Virginia Cramer -
Petitioner-Plaintiff-Appellant
In Pro Per

Dated:
Mar 17, 1980

MOTION FOR STAY PENDING REVIEW No. 80-1118

Comes now Virginia Cramer, Petitioner-Plaintiff-Appellant, in propria persona, herein, who has concurrently herewith filed with this Honorable Court a Notice of Appeal on February 8, 1980, which was docketed on March 11, 1980 together with the transmitted original record, in the above-captioned case, from the United States District Court, Detroit, Michigan, and on the basis of the facts set forth herein and supported by the attached affidavits, Appellant hereby moves that this Honorable Court grant forthwith a STAY ORDER PENDING REVIEW against the Wayne County Circuit Court, Third Judicial Circuit, Detroit, Michigan, during the pendency of the appeal as effected by the Notice of Appeal filed on February 8, 1980, and which said Order of the United States District Court held:

> "IT IS HEREBY ORDERED AND ADJUDGED that as to co-defendant, Allen Counard, this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan, and that-as to all remaining defendants and co-defendants herein this action be and hereby is dismissed."

An application for relief from that part "remanded to the Wayne County Circuit Court"

was not sought because of such conflict obvious as stated in said Order being appealed from in whole, a copy of which is attached hereto.

The reasons supporting this motion and the facts upon which they are based are shown in the attached affidavit of Appellant, and are summarized here as follows:

1. Since February 1, 1980, and concurrently proceedings were initiated by the attorneys for Co-Defendant Allen Counard (who is also an attorney) and are presently occurring, in the Wayne County Circuit Court.

2. It is impracticable and an excessive burden on your Appellant herein to be unreasonably required to respond in two different jurisdictions at the same time which minimizes Appellant's capabilities as to preparation of her brief on appeal.

/s/ Virginia Cramer
Dated: Petitioner-Appellant
Mar 16, 1980 In Pro Per

STATE OF MICHIGAN)
COUNTY OF WAYNE) SS.

AFFIDAVIT IN SUPPORT OF MOTION FOR STAY ORDER PENDING REVIEW

Virginia Cramer, being duly sworn, deposes and says:

1. That she is the Petitioner-Plaintiff-Appellant and is fully familiar with all of the facts and proceedings in this action; and she submits this affidavit in support of the annexed motion for Stay Order Pending Review, in this action.

2. That on January 17, 1980, Judge Anna Diggs Taylor of the United States District Court, Eastern District of Michigan, Southern Division, Detroit, Michigan, entered an "Order of Dismissal in Part and Order of Remand in Part" from which your Appellant desires greatly to be reviewed in whole on appeal.

3. That commencing on February 1, 1980, the attorneys for co-defendant Allen Counard (who is also an attorney, formerly representing client-Virginia Cramer) filed pleadings in the Wayne County Circuit Court, in this same case, and said attorneys are persisting unreasonably and unjustifiably, and where your Appellant believes that the Wayne County Circuit Court should not have jurisdiction in the matter while pending upon appeal in the United States Court of Appeals.

4. That, in any event, it is more than likely that whatever results by the unreasonable conduct of said attorneys for co-defendant-Allen Counard, in pursuing litigation in the Wayne County Circuit Court, will then be taken on appeal and probably to a third jurisdiction, concurrent with the pending of review in the United States Court of Appeals.

5. That this case already has more defendants and co-defendants, who are attorneys at law, than an octopus has tenacles, and your Appellant feels like she is being strangled under these conditions, because she is not a lawyer.

6. That where your Appellant is diligently and conscientiously in the process of preparation of her brief on appeal, and while being hampered with failing eyesight, it appears absolutely unwarranted and an injustice for her to be unduly imposed upon by unscrupulous opponents in this matter,

and where your Appellant is trying very hard to meet the time schedule as outlined in the United States Court of Appeals letter dated March 11, 1980, copy of which is attached hereto.

7. That it is respectfully submitted that during the pendency of this appeal the provisions of Judge Anna Diggs Taylor's Order pertaining to "this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan' should be stayed, particularly in the light of the many important legal questions and unresolved issues in this matter. In your deponent's opinion, that part of remanding to the Wayne County Circuit Court is in error, and for the reasons that a review court should have the entire matter before them to properly make determinations involved in this appeal.

8. That your Appellant should not be subjected to the drastic effect of having one of the co-defendants separated from the whole of the "case," which would, more than likely, cause much confusion and mistakes along the way in the appeal matters; that your Appellant desires to eliminate confusion and mistakes.

9. In the event that this United States Court of Appeals would not approve a Stay Order Pending Review against the Wayne County Circuit Court, Third Judicial Circuit, Detroit, Michigan, then, in the alternative, A Stay Order Pending Review should be issued against Co-Defendant Allen Counard and his agents, servants, representatives, employees, partners and attorneys.

10. That since 1972, your Appellant has tried diligently to engage the services of an honest and competent attorney, in the prior action and in this action which is really one case, and your Appellant has been unable to find that particular kind of

attorney presumably because of this case being fraught with conflict of interests; that your Appellant has ample funds to pay a good attorney.

11. That in the event that this United States Court of Appeals requires a bond for Stay Order Pending Review, that the amount should be reasonable.

12 No previous application has been made for the relief herein prayed for or for any similar relief except as herein stated.

WHEREFORE, for all of the foregoing reasons your Appellant respectfully prays that this Honorable court forthwith issue its Stay Order Pending Review against the Wayne County Circuit Court, Third Judicial Circuit, State of Michigan, or, in the alternative, issue a Stay Order Pending Review against co-defendant Allen Counard, his agents, servants, representatives, employees, partners and attorneys.

Dated:
Mar 17, 1980 /s/ Virginia Cramer,-
Petitioner-Plaintiff-
Appellant, In Pro Per

(short jurat)

Filed March 27, 1980 No. 80-1118
United States Court of Appeals
for the Sixth Circuit

OBJECTIONS OF DEFENDANT-APPELLEE COUNARD TO PLAINTIFF'S MOTION FOR STAY PENDING REVIEW

Defendant Counard objects to the taking of the within appeal since same is totally improper and furthermore objects to the request for a stay of proceeding since Plaintiff's appeal to the United States District Court for the Eastern District

Michigan is itself improper and therefore no stay of proceedings should issue therefrom.

Specifically, the Order appealed from insofar as it relates to Defendant Counard is Judge Taylor's Order of Dismissal in part and Order of Remand in part. To the extent that the Order of January 17, 1980 affects Defendant Allen Counard, it does so as an Order of Remand. This Court should recall that Plaintiff presently has another previous action pending in State Court and re-commenced this instant action in the United States District Court for the Eastern District of Michigan as a "removal". The Order of January 17, 1980 operates as as remand of the federal action against Allen Counard to be joined with the State action against Allen Counard. 28 USC 1447 (d) state as follows:

> "An order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise, except an order remanding a case to the state court to which it was removed pursuant to sec. 1443 of this title shall be reviewable by appeal or otherwise."

Plaintiff's request for stay of proceedings as to the state action should be denied. Plaintiff already has one existing lawsuit against Defendant Allen Counard pending in State Court in Michigan, and it is entirely onerous, burdensome and vexatious for this federal case to be proceeding on identical grounds in federal court in any event.

Denial of Plaintiff's stay of proceedings is a necessary corollary to 28 USC 1447(d) since this appeal is not proper in the first

place.

PLUNKETT, COONEY, RUTT, WATTERS,
STANCZYK & PEDERSEN
By (unsigned)
Thomas M. O'Leary (P18466)
John P. Jacobs (P 15400)
Attorneys for Co-Defendant-
Appellee Counard

Dated:
Mar 21, 1980

Filed March 27, 1980 No. 80-1118
Un ited States Court of Appeals
for the Sixth Circuit

MOTION TO DISMISS APPEAL

NOW COMES Defendant-Appellee Allen Counard, by and through undersigned counsel, and pursuant to United States Court of Appeals for the Sixth Circuit Rule No. 8, Defendant-Appellee Allen Counard moves to dismiss the within appeal for a lack of jurisdiction for the following reasons:

1. That Plaintiff has pending in State Court, State of Michigan, Circuit Court for the County of Wayne, Virginia Cramer v Allen Counard, Wayne County Docket No. 78-822879CZ, which seeks from Defendant Allen Counard, Plaintiff's former attorney, damages for alleged legal malpractice;

2. That said state action was pending before the instant federal action, Cramer v Counard, United States District Court for the Eastern District of Michigan, Docket No. 9 72789, which seems identical or virtually identical claims against Defendant Counard and which purports to exist in Federal Court because of Plaintiff's attempt to remove said action;

3. That the Order appealed from in the instant action is the Order of Judge Anna Diggs Taylor dated January 17, 1980 which Order dismisses certain Defendants and, as to Defendant Allen Counard, remands the federal action to State Court for joinder with the state action previously pending;

4. That insofar as the Order appealed from of Judge Anna Diggs Taylor dated January 17, 1980 is an Order of Remand as to Defendant Counard requiring the federal action to be remanded to State Court to be joined with the Wayne Circuit action, Docket No. 78-822879 CZ, such Order of Remand is specifically not appealable pursuant to 28 USCA 1447(d), and the within appeal should be dismissed for a complete lack of jurisdiction in this Court to review same.

5. That pursuant to 28 USC 1447(d), Plaintiff's instant action is not appealable as to Defendant Allen Counard and same should be dismissed pursuant to said statute.

WHEREFORE, Defendant-Appellee Counard prays that the appeal filed by the Notice of filing Appeal of Plaintiff dated February 8, 1980 should be dismissed by this Court forthwith pursuant to 28 USC 1447(d) insofar as the Order appealed from dated January 17, 1980 seeks to remand a portion of Plaintiff's federal action as to Defendant Allen Counard to State Court to be joined with the state action previously filed by Plaintiff against Defendant Counard which is still pending in said State Court.

Dated:
Mar 25, 1980

PLUNKETT, COONER, RUTT, WATTERS, STANCZYK & PEDERSEN
by (unsigned)
Thomas M. O'Leary (P18466)
John P. Jacobs (P 15400)
Attorneys for Co-Defendant-Appellee Counard

Affidavit of John P. Jacobs, unsigned.

Filed April 7, 1980 No. 80-1118
United States Court of Appeals
Sixth Circuit

OBJECTIONS TO MOTION TO DISMISS APPEAL

COMES NOW Plaintiff-Appellant Virginia Cramer, in propria persona, and objects to Defendant-Appellee Allen Counard's motion to dismiss appeal, and the said motion should be denied, for the following reasons:

1. Answering to paragraph 1, Plaintiff-appellant denies the same and affirmatively states that said matter of Civil Action No. 78-822-879 CZ, and by motions being deferred is pending in the Michigan Supreme Court, Docket No. 62249 (not in the Wayne County Circuit Court) and for the reasons that an "Order Setting Aside Default of Co-Defendant-Allen Counard" was entered in abuse of the court's discretion, and where Co-Defendant-Allen Counard failed to plead and defend and subsequently by a so-called 'answer' to complaint is till a failure to plead or defend. Further, the attorneys for Co-Defendant-Attorney-Allen Counard claimed that by Plaintiff-Cramer's acceptance of $50.00 costs awarded by the said Wayne County Circuit Court judge in setting aside default of said Co-Defendant-Allen Counard, that Plaintiff-Cramer 'waived' her appeal rights. Plaintiff-Cramer sought appellate review of same in the State appellate divisions, and for the reason that it appears that the $50.00 costs may be deemed to be some kind of a bribe so that the Order entered in abuse of the court's discretion may not be appealed from. The said $50.00 costs is filed as evidence of said bribe, in the Michigan Supreme Court, and the matter is pending in the Michigan Supreme Court (together with appeal from Summary

judgment entered in favor of Defendants-Metropolitan, et al.).

2. Answering to paragraph 2, Plaintiff-Appellant denies the same and affirmatively avers that she filed a non-identical complaint in the Federal district court, Docket No. 79-72789, where the pertinent parties herein are aligned as: Virginia Cramer, Petitioner-Plaintiff vs Allen Counard, attorney at law, Co-Defendant; that further, Co-Defendant-attorney-Allen Counard failed to answer to said Complaint in the Federal district court, Docket No. 79-72789, and therefore, failed to plead and defend as to allegations and charges of conspiracy and obstructing justice, as well as failed to plead and defend to allegations and charges of legal malpractice. That further, Defendants and Co-Defendants Metropolitan Savings and Loan and their attorneys' motion to remand (as to removal of State court case) was denied by the United States District Court in this matter.

3. Answering to paragraph 3, Plaintiff-Appellant denies the same and affirmatively avers that there is no authority which permits a remand of the federal action for joinder with the state action in the State court. The said order entered on January 17, 1980, in the United States District Court reads as follows:

> "On the several motions of all the defendants and co-defendants herein, after hearing argument of all parties, and the Court having reviewed the files and records in this case, and for the reasons as stated on the record, the Court being fully advised in the premises,

"IT IS HEREBY ORDERED AND ADJUDGED that as to co-defendant, Allen Counard, this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan, and that as to all remaining defendants and co-defendants herein this action be and hereby is dismissed."

and Plaintiff-Appellant is appealing the said "Order" in whole, and is in the process of preparation of her brief on appeal for filing in the United States Court of Appeals, Sixth Circuit.

4. Answering to paragraph 4, Plaintiff-Appellant denies the same and affirmatively avers that, again, there is no authority which would require a federal action to be remanded to a State court to be joined with a lower court (Wayne County Circuit Court) case when said matter was pending in the Michigan Supreme Court of the State of Michigan. Further, Plaintiff-Appellant denies that the said Order of Remand In Part is not appealable and denies that the United States Court of Appeals lacks jurisdiction to review same pursuant to 28 USCA 1447(d); further, Plaintiff-Appellant specifically and affirmatively avers that 28 USCA 1447(d) allows for appeal, to wit:

"an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise." (emphasis added)

NOTE: This Honorable court should take notice that the attorneys for Co-Defendant-Attorney-Allen Counard have misrepresented to the court and mis-quoted the provisions of 28 USCA 1447 (d) as shown on page 2 of their "Objections to Plaintiff's

motion for stay pending review."

5. Answering paragraph 5, Plaintiff-Appellant denies the same and she affirmatively states that the provisions of 28 USC 1447 Id) mandate review by appeal or otherwise, pertaining to an order remanding a case to the State court which was removed pursuant to section 1443 of Title 28; that, therefore, the motion to dismiss appeal should be denied.

WHEREFORE Plaintiff-appellant in pro per prays that the motion to dismiss appeal be denied, for the reasons above-stated and plaintiff-appellant incorporates herein her brief in support of her Objections to motion to dismiss appeal attached hereto, and for the reasons that there is no authority which permits a federal action to be joined with the State action in the State court.

Respectfully submitted,
/s/ Virginia Cramer,
Plaintiff-appellant
In Pro Per

Dated:
Apr 2, 1980

BRIEF IN SUPPORT OF OBJECTIONS TO MOTION TO DISMISS APPEAL

RELEVANT BACKGROUND OF FACTS as to Co-Defendant-attorney-Allen Counard:

In a prior action, Wayne Circuit Court No. 115-792, ultimately reported at 401 Mich 252 (Michigan Supreme Court No. 57215) dated October 6, 1977, mortgagor-Virginia Cramer hired two (2) different attorneys, at different times, the first of whom was Co-Defendant Abel J. Selburn, and the second of whom was Co-Defendant-Allen Counard.

In the second action commenced in the Wayne County Circuit Court by mortgagor-Virginia Cramer (in wrongful foreclosure action) against Defendants Metropolitan - Federal Savings and Loan and their attorneys Co-Defendants herein, Petitioner-Virginia Cramer also named her second former attorney, Allen Counard, as a Co-Defendant, in Civil Action No. 78-822-879 CZ.

This instant motion to dismiss appeal is initiated by the attorneys who represent said Co-Defendant-Attorney-Allen Counard only.

The allegations in said Civil action No. 78-822-879 CZ consist of legal malpractice, fraud, concealment and/or deception, and further alleges that fraud was perpetrated upon the Michigan State courts in said prior action No. 115-792, ultimately reported at 401 Mich 252.

(The instant action, as filed in the United States District Court further named the Michigan Supreme Court members, jointly, severally and individually, as Co-Defendants, and alleges that said members have condoned fraud, among other things.)

In said second action commenced in the Wayne County Circuit Court, No. 78-822-879 CZ, Co-Defendant-Allen Counard failed to plead and defend and a Default and Affidavit in Support of Default was filed against said Co-Defendant-Allen Counard (an attorney at law). By his attorneys, a motion to set aside default was filed, and where Plaintiff-Virginia Cramer filed objections and specifically averred that setting aside default, without a showing of good cause, would be abuse of discretion by the court. The court granted Co-Defendant-Allen Counard's motion and entered an order

setting aside default. Whereupon, a so-called 'answer' was filed on behalf of Co-Defendant-Allen Counard which is still a failure to plead or defend and claiming as his only affirmative defense the two-year statute of limitations as to 'malpractice'. No meritorious defenses were offered.

(In the interim, Defendants and Co-Defendants Metropolitan Federal Savings and Loan and their attorneys, obtained an Order granting Accelerated and/or Summary Judgment dismissing as to all other Defendants and Co-Defendants as to the Complaint filed alleging legal, malpractice, fraud, concealment and deception and that fraud had been perpetrated upon the court. No answer to said complaint was filed by said multiple defendants and their attorneys as Co-Defendants.)

Petitioner-Cramer sought to appeal and where the Michigan Court of Appeals dismissed said appeal, on the basis of the "Order Setting Aside Default of Co-Defendant Allen Counard" was not a final appealable order. However, it is Plaintiff-Cramer's contention that it is a final order where the pleadings of Co-Defendant Allen Counard's attorneys claimed that by Plaintiff-Cramer accepting $50.00 costs for the trouble she was cause in filing said "Default" which the Wayne County Circuit Court set aside in the absence of good cause, that she had waived her appeal rights by said acceptance of $50.00 costs. Plaintiff-Cramer further sought to appeal in the Michigan Supreme Court as to the two (2) separate orders entered in the Wayne County Circuit Court, together with numerous motions filed in the Michigan Supreme Court, involving the defective decision reported at 401 Mich 252.

Further, in the interim, the attorneys for Co-Defendant Allen Counard filed in the Wayne County Circuit Court (while said matters were pending in the appellate divisions of the Michigan State courts) motions for accelerated and/or summary judgment based solely on the affirmative defense of the two-year statute of limitations period as to "malpractice", and in the absence of any meritorious defenses and where the so-called 'answer' filed on behalf of Co-Defendant-attorney-Allen Counard, is absent of any specific averments and is still a failure to plead or defend.

Subsequently, the attorneys for Co-Defendant-attorney-Allen Counard, have repeatedly filed in the Wayne County Circuit Court motions for accelerated and/or summary judgment, based on the one premise of barring Plaintiff-Cramer by invoking the two-year Statute of Limitations, which is not applicable. The asserted malpractice charges are prima facie evidence in the Wayne County Circuit Court records.

However, Plaintiff-Cramer charges more than malpractice, under 42 USC 1985 and that lawyers as a class-based group engage in a motivated conspiracy (or cover-up) invidiously discriminatory against their own client and/or clients (and mortgagors) and where said client is denied a day in court, denied due process of law and denied the equal protection of the laws by the very simple effect of hiring a lawyer. Such is the instant case, where Petitioner-Cramer has never had a day in court as to the foreclosure proceedings taken by mortgagee-Metropolitan Federal Savings and Loan, and where no default in the mortgage was ever shown, and where said mortgagee accelerated the principal debt by foreclosure

on mortgagor's own moneys as "escrow" funds, in an excessive amount, for the future liabilities of taxes and insurance which were not yet assessed, not billed, not due. Nothing was due and nothing was unpaid;- there was a credit balance in mortgagor-Cramer's "escrow" account, at the time of the foreclosure initiated by the mortgagee-Metropolitan, and which said credit balance was applied as a reduction of the principal balance in the Sheriff's Bidding Statement (prepared by mortgagee-Metropolitan) on the sale of said real property. No taxes or insurance payments were due; none were unpaid. However, the foreclosure was initiated by the mortgagee because mortgagor complained that her "escrow" moneys were being mishandled where the mortgagee failed and neglected to pay taxes and insurance when due, although funds were available, alowing said taxes and insurance to become seriously delinquent, repeatedly. Further, the courts forced Cramer to hire lawyers and where upon engaging the services of said lawyers Cramer has never had a day in court to prove that there was no basis for the foreclosure and that Cramer was never in default of said mortgage covenant and agreement, and Cramer was never in default of the mortgage note. In fact, as said by the Michigan Supreme Court, in 401 Mich 252, she was "well ahead in her repayment schedule." Contrary to the decison of the Michigan Supreme Court (among many other false facts in said decision) Cramer paid "escrow" moneys each and every month without fail. After the foreclosure by advertisement was first published, Cramer refused to pay "escrow", not before the foreclosure publication. The foreclosure occurred first. Subsequently, mortgagor-Cramer refused to pay "escrow." The difference in these elements are of great and significant importance, and the Michigan Supreme Court disregarded the specific dates of occur-

rances of facts; totally unfair to mortgagor-Cramer.

See, A Sick Profession -- Judge Warren E. Burger, 5 Tulsa L J 1 (January 1968)

"My final proposition can be roughly stated as follows:

(1) the legal profession as a whole has very poor standing;

(2) there are many causes for this; some of them are the incompetence, misconduct, bad manners and lack of training of a great many lawyers who appear in the courts; and

(3) there is something we can and ought to do about this as the English bar and bench did a century ago.

" * * * There is no single cause for what * * * would be called the "bad image" of the legal profession. The total image is a stream into which many things are poured. The deportment and misconduct of some members of the bar pollute this stream and their bad manners contribute to the bad performance. * * * The title lawyers and real estate lawyers who engage in miscellaneous chicaneries to bilk home-owners are, of course, a large factor; and, with the enormous expansion in the building, buying and selling of homes, thousands of Americans have been mistreated by this group and are properly resentful. * * * There are others. * * * "

CURRENT FACTS: (pertinent to Co-Defendant Allen Counard only)

While this entire case (which is really one case) has snow-balled in the filing of the Federal court action and where other parties are named as Co-Defendants, your

plaintiff-appellant will attempt to confine these current facts solely to Co-Defendant-Attorney-Allen Counard, by his attorneys - motion to dismiss appeal. (This is emphasized for the reason that, where the court will review the pleadings filed by Defendants and Co-Defendants, it is deliberately confusing, and which the court should not tolerate, where it erroneously appears (like mob-violence) that the attorney for the Federal Home Loan Bank Board may be representing the Michigan Supreme Court, which is not authorized; the attorneys for - Co-Defendant-Allen Counard may be representing the mortgagee-Metropolitan Federal Savings and Loan and their attorneys, etceterra, etceterra, etceterra !!! and which such rrpresentation is unauthorized.)

The State case for which mortgagor-Cramer sought "removal" of to the Federal District Court, is styled as:

Virginia Cramer, Petitioner-Defendant (in wrongful foreclosure action) Petitioner-Plaintiff VS METROPOLITAN SAVINGS ASSOC., a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOC., JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, jointly, severally and individually, Plaintiffs in wrongful foreclosure action, Defendants and McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, attorneys at law, jointly, severally & individually, Co-Defendants and ALLEN COUNARD, Co-Defdnt.	Mich S Ct No 62249 (filed 11-6-78) Mich Ct of Appeals No 78-3794- filed 9-21-78 Wayne Cir. Ct. No. 78-822-879 CZ (commenced 7-14-78) Prior (Wayne) No. 115-792 (Commenced 8-12-68) Mich S Ct. No. 57215 reported at: 401 Mich 252

The instant action, as filed in the Federal District Court on July 17, 1979, is styled as shown in these pleadings herein as filed in the United States Court of Appeals, Sixth Circuit, and where Petitioner-Plaintiff named additional Co-Defendants, as follows:

Abel Selburn (mortgagor-Cramer's first attorney)
William R. McFadden (mortgagor-Cramer's third attorney)
Federal Home Loan Bank Board, Director,
Michigan Supreme Court members

The Complaint for Declaratory Judgment, Preamble, Reversal of Michigan Supreme Court Decision, Injunctive Relief, and Money Damages for Injuries to Person and Property, as filed in the Federal District Court, together with Petition for Removal, on July 17, 1979, together with Motion for Preliminary, Permanent and Eternal Injunctive Relief and Notice of Hearing, in all, were served by the U. S. Marshal's office upon all the main multiple defendants and co-defendants, including said personal service of process on Co-Defendant Allen Counard, with Summons.

Co-Defendant Allen Counard never answered to said Complaint, which is non-identical and with separable controversies and causes, included as follows:

Preamble, pages 1 through 19
1. Jurisdiction and Venue, paragraphs 1.1 through 1.10
2. Cause of Action and Federal Intervention, paragraphs 2.1 through 2.7
3. Wrongful Foreclosure, Slander of Title, paragraphs 3.1 through 3.11
4. Actual Controversy - State Action Involved, paragraphs 4.1 through 4.8

5. Willful and Malicious Tort, paragraphs 5.1 through 5.4
6. Fraud, Concealment and Deception - Attorney Malpractice, (Selburn and Counard) paragraphs 6.1 through 6.28
7. Fraud, Concealment or Deception - Attorney Malpractice, McClintock Donovan Carson & Roach, Michael Doelle and William P. Thorpe, paragraphs 7.1 through 7.36
8. Conspirators - Obstructionists of Justice (Selburn, Counard and McFadden) paragraphs 8.1 through 8.15
9. Actual Controversy - Federal Action Involved - Federal Home Loan Bank Board, paragraphs 9.1 through 9.25
10. Injunctive Relief Against Michigan Supreme Court Justices, paragraphs 10.1 through 10.23
11. Measure of Damages, paragraphs 11.1 through 11.2
12. Prayer for Relief and Demand for Trial by Jury, paragraphs 12.1 through 12.7

On January 17, 1980, the Federal District Court-Detroit, Michigan, entered an "Order of Dismissal In Part and Order of Remand in Part." The 'remand' pertains to only Co-Defendant-attorney-Allen Counard. Petitioner-Cramer (Plaintiff-appellant herein) filed her Notice of Appeal on February 8, 1980. In the interim, Co-Defendant-attorney-Allen Counard, by his attorneys, have again resorted to their harassment tactics and have repeatedly filed in the Wayne County Circuit Court motions for accelerated and/or summary judgment and solely based upon the two-year statute of limitations as to 'malpractice'. Plaintiff-Appellant-Cramer contends that the said two-year statute of limitations is not applicable, and as more fully shown in her Law and Argument portion of this brief, below.

More specifically, "Cramer" contends that the Wayne County Circuit Court, by Michigan Court of Appeals decisions, is not authorized to enter such an order of dismissal as to Co-Defendant-attorney-Allen Counard, and which would require taking on appeal if granted by the Wayne County Circuit Court.

In the United States District Court, all of the main multiple Defendants and Co-Defendants were served personally by the U.S. Marshal's service of process, with the non-identical Complaint and Summons issued. However, only Co-defendants Selburn and McFadden filed 'answers' to said Complaint.

Prior to the entry of the "Order by the United States District Court, the only pleadings filed on behalf of Co-Defendant-attorney-Allen Counard, by his attorneys, are:

Motion for Remand of Above-Captioned Action

Motion to Exercise Discretion in Favor of Abstention and Dismissal of Declaratory Complaint

Furthermore, from six (6) pages of docket entries in said Federal District court, Docket No. 79-72789, it shows, in part, as follows:

* * *

1979	Sept 18	33.	Letter from Corbin Davis (Supreme Court) re: motions pending in Supreme Court are to be deferred until U.S. District Court makes ruling. DD 9-19-79

* * *

1980	Jan 17	---	Deft's McFadden's motion for judgment on the pleadings heard and granted; Defts' Selburn's Motion for judgment on the pleadings heard and

granted; Deft's Federal Home
Loan motion to dismiss granted;
Deft Allen Counard's Motion
to remand cause to Circuit
Court, granted.
Deft Metro Savings Assoc's
Motion to Dismiss granted.
Motion to remand denied;
Deft's (Members of Supreme
Court Motion to dismiss granted.
Taylor, J DD 1-18-80

* * *

Moreover, the "Order of Dismissal In Part and Order of Remand in Part" entered on January 17, 1980, by the Honorable Anna Diggs Taylor, U. S. District Court Judge, CA No. 9 72789, reads as follows:

> "On the several motions of all the defendants and co-defendants herein, after hearing argument of all parties, and the Court having reviewed the files and records in this case, and for the reasons as stated on the record, the Court being fully advised in the premises,
>
> "IT IS HEREBY ORDERED AND ADJUDGED that as to co-defendant, Allen Counard, this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan, and that as to all remaining defendants and co-defendants herein this action be and hereby is dismissed."

No answer to the Complaint in the United States District Court was filed by said co-defendant-attorney-Allen Counard and his attorneys. In fact, no other pleadings were filed by said co-defendant Allen Counard. It is obvious that counsel for co-defendant Counard did not know to which State jurisdiction he was asking for remand to.

LAW AND ARGUMENT

None of co-defendant Counard's pleadings offer any kind of meritorious defense; not in the State court action—and not in the Federal court action. Co-Defendant Counard, by his attorneys, rely only on the two-year period of limitations, found in MCLA 600.5805 (3); MSA 27A.5805 "The period of limitations is 2 years for actions charging malpractice."

However, in MCLA 600.5807 (8); MSA 27A. 5807 "The period of limitations is 6 years for all other actions to recover damages or sums due for breach of contract."

"Cramer's" contention is that, in view of all of the case law available to support that attorneys are generally engaged on a contractual basis, that the 6-year period in MCLA 600.5807 (8); MSA 27A.5807, is more applicable as to alleged "legal malpractice" as distinguished from perhaps medical malpractice. (This is not in issue before this court; Plaintiff-appellant herein simply wants to point out that there is no intention on her part to avoid the Statute of Limitations issue in the Wayne County Circuit Court.)

However, more significantly, and furthermore, MCLA 600.5855; MSA 27A 5855 "Fraudulent concealment of claim or identity of person liable, discovery" provides as follows:

> Sec. 5855. If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim from the knowledge of the person entitled to sue on the claim, the action may be

commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim or the identity of the person who is liable for the claim, although the action would otherwise be barred by the period of limitations."

Thus, where the second action was commenced in the Wayne Circuit Court, CA 78-822-879 CZ, on July 14, 1978, following the decision of the Michigan Supreme Court dated October 6, 1977, the instant cause against co-defendant Allen Counard (together with other multiple defendants and co-defendants) therefore, is not barred by the Statute of Limitations, where the time element must be computed from the date of October 6, 1977, reported as 401 Mich 252.

Moreover, in Corley v Logan (1971) 192 NW 2d 319, 35 Mich App 199, where the attorney's conduct by filing an improper ready for pretrial certificate and whether it fraudulently concealed his potential liability to his client was deemed by the Michigan Court of Appeals to be a fact question precluding summary judgment in favor of either party in a legal malpractice action.

(It should be noted that in all probability there are other matters of legal malpractice where fraud, concealment and deceit may be shown and not yet discovered (as to the prior action), and the statute of limitations has not yet begun to run. In the State court action No. 78-822-879 CZ, as relevant to the prior State court action No. 115-792, where attorney Allen Counard was supposed to have managed the case (involving wrongful foreclosure) for a period of approximately 2 years.

The parties, Petitioner-Plaintiff Virginia Cramer vs Co-Defendant Allen Counard are

aligned the same in the State court action 78-822-879 CZ, as in the United States District Court Action No. 79-72789, and where said co-defendant Allen Counard, by his attorneys,—lacked standing to invoke the "absention-doctrine" in said Federal court (as to the anti-injunction statute, — and pertaining to the members of the Michigan Supreme Court).

That further, Petitioner-Virginia Cramer (who claims to be a "defendant in part, as to the wrongful foreclosure, and plaintiff in part as to Co-Defendant Allen Counard) in the said Federal court action, involving civil rights and constitutional issues and federal questions (among other matters) and including conspiratorial issues as to that class-based, invidiously discriminatory motice of "cover-up" between and among attorneys, as against their client or clients, and which may also include unnamed co-conspirators who go in the guise of judges or justices, as members of the judiciary, it is appropriate for Petitioner-Cramer to invoke 42 USC 1983, 1985; 28 USC 1343, 1443; 12 USC 1461, et seq., and 28 USC 1337, involving violations of 15 USC 1 and 2, et seq., together with deprivations of civil rights, deprivations of due process of law, deprivations of equal protection of the law, among many other areas of jurisdiction in the federal courts.

(Where this action originates between a mortgagor and mortgagee as to "escrow" funds, which is the mortgagor's own money, at the beginning all the mortgagor-Virginia Cramer wanted was to have her taxes and insurance paid when due, and where the mortgagee failed and neglected, repeatedly, to utilize mortgagor's "escrow" funds properly and at the same time requiring "excessive" amounts (called cushioning in the industry) "Cramer"

sought a release from the covenant and agreement to enable her to pay her own liabilities and obligations, and the mortgagee-Metropolitan refused and maliciously foreclosed by advertisement on "escrow" funds and accelerated the principal debt. Following that, the mortgagee-Metropolitan then refused to accept any moneys from "Cramer" "on account of the foreclosure".) Since then, the attorneys, the State court judges, the justices of the Michigan Supreme Court, and others, have mixed "apples" and "oranges" and gone "bananas" which at the beginning amounted to only "peanuts", except for a "Sick Profession" and what this case has evolved into. The mortgagee-Metropolitan was ready, and with the aid of the courts, to hand this mortgagor from a meat-hook, upside down, loan-shark style, to extort "excessive escrow" funds for their mishandling, and to confiscate her property, when nothing was due and nothing was unpaid.

See, Mitchum v Foster, 407 US 225, at 238-239;

> "Section 1983 was originally Section 1 of the Civil Rights Act of 1871. 17 Stat. 13. It was "modeled" on section 2 of the Civil Rights Act of 1866, 14 Stat. 27, and was enacted for the express purpose of "enforcing the Provisions of the Fourteenth Amendment." 17 Stat. 13. The predecessor of 1983 was thus an important part of the basic alteration in our federal system wrought in the Reconstruction era through federal legislation and constitutional amendment. As a result of the new structure of law that emerged in the post-Civil War era-- and especially of the Fourteenth Amendment, which was its centerpiece--the role of the Federal Government as a guarantor of basic federal rights against state power was clearly established. Monroe v Pape, 365 US 167;

McNeese v Board of Education, 373 US 668; Shelley v Kraemer, 334 US 1, Swickler v Koota, 389 US 241, 245-249 (Etceterra).

"Section 1983 opened the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law unpon rights secured by the Constitution and laws of the Nation.

"It is clear from the legislative debates surrounding passage of 1983's predecessor that the Act was intended to enforce the provisions of the Fourteenth Amendment "against State action . . . whether that action be executive, legislative, or judicial." Ex parte Virginia, 100 US 339, 346 (emphasis supplied). Proponents of the legislation noted that state courts were being used to harass and injure individuals, either because the state courts were powerless to stop deprivations or were in league with those who were bent upon abrogation of federally protected rights.

" * * * Hence this bill throws open the doors of the United States courts to those whose rights under the Constitution are denied or impaired." Cong. Globe, 42d Cong., 1st Sess., 374-376 (1871).

This view was echoed by Senator Osborn: "If the State courts had proven themselves competent to suppress the local disorders, or to maintain law and order, we should not have been called upon to legislate.. . . We are driven by existing facts to provide for the several states * * * what they have been unable to fully provide for themselves; i.e., the full and complete administration of justice in the court. * * * "

"Section 1983 was thus a product of a

vast transformation from the concepts of federalism that had prevailed in the late 18th century * * * . The very purpose of 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights -- to protect the people from unconstitutional action under color of state law, "whether that action be executive, legislative or judicial." Ex parte Virginia, 100 US, at 346.

In Huffman et al v Pursue, Ltd., 420 US 592, the high court said,

> " * * * assuming, arguendo, that litigants are entitled to a federal forum for resolution of all federal issues, that entitlement is most appropriately asserted by a state litigant when he seeks to relitigate a federal issue adversely determined in completed state court proceedings."
> Pp 605-607.

Where the State action was pending in the Michigan Supreme Court, it was error for the United States District Court to remand to the Wayne County Circuit Court. 28 USC 1447 (c) states as follows:

> "If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, * * * . A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. * * * "

The instant Order entered on January 17, 1980, as a final judgment, includes an erroneous remand (as to Co-Defendant Allen Counard only) to the Wayne County Circuit Court. The matter was pending in

the Michigan Supreme Court. Prior law on removal of suits from State courts initiates from the Judicial Code of 1911, c. 231, 36 Stat. 1087, entitled "Act to codify, revise and amend the laws relating to the judiciary" provided in section 28, as amended, as follows:

> " * * * Whenever any cause shall be removed from any State court into any district court of the United States, and the district court shall decide that the cause was improperly removed, and order the same to be remanded to the State court from whence it came, * * * ." (emphasis added)

Removal was sought from the Michigan Supreme Court, not from the Wayne County Circuit Court, and therefore, the remand to the Wayne County Circuit Court included in the final judgment entered on January 17, 1980, is appealable as an erroneous remand, and which, further is provided for in 28 USC 1447 (d) which states as follows:

> "An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to to the State court from which it was rem oved pursuant to section 1443 of this title shall be reviewable by appeal or otherwise." (emphasis added)

"From which it was removed" is synonymous to "from whence it came". Remand of the cause to the Wayne County Circuit Court was error for the reasons that the cause was pending in the Michigan Supreme Court, and when "removal" was sought.

The Michigan Supreme Court was never furnished with a certified copy of the Order as entered in the United States District Court on January 17, 1980. There is no inference or intent for the United States District Court cause to be joined with the State action aginst Co-Defendant Allen Counard. There is no authority to do so; it would be highly improper. The Wayne - County Circuit Court would have no jurisdiction to review the matter, which involved a decision rendered by the Michigan Supreme Court reported at 401 Mich 252, and where the Michigan Supreme Court members are named as Co-Defendants.

28 USC 1443, provides as follows:

"Any of the following civil actions * * * commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act - on the ground that it would be inconsistent with such law."

Mortgagor-Cramer, is actually a defendant - in the foreclosure by advertisement proceedings initiated by the Mortgagee-Metropolitan, and she has never had a day in court as to said foreclosure. Hopefully, it may not be

necessary for "Cramer" to take an ax to Washington, D.C. and literally chop down the doors to the United States Supreme Court to gain access to the court. Boddie vs. Connecticut, 401 US 371, 91 S Ct 780; 28 L Ed 2d 113 (1971). "Among the most dangerous things an injured party can do is to appeal to justice." Mitchum v Foster, 407 US 225-244, Id. 241.

Further, mortgagor-Cramer claims state action is involved by having been forced to hire lawyers, the first of whom abandoned the case in fraud of his client-Cramer, the second of whom, Allen Counard, misrepresented and mismanaged the case so as to assure the denial of equal protection of the laws and the denial of due process in ruthless violation of the Fifth and Fourteenth Amendments to the United States Constitution (among other violations) because of conflict of interest, among other things. Under the provisions of 42 USC 1983, the courts have required a showing of state action. Morgan v Odem, C.A. La 1977, 552 F 2d 147.

> "Test of whether joint participation or conspiracy exists, for purposes of state action requirement of this section (1983), is whether facts alleged demonstrate that private individual and public official acted with common understanding or "meeting of the minds" to deprive plaintiff of his constitutionally protected rights." (emphasis added) Baer v Baer, D.C. Cal. 1978, 450 F Supp 481.

In a case, where a Plaintiff motioned to remand, Sweeney vs Morgan Drive Away, Inc., 394 F Supp 1216 (1975) the United States District Court denied Plaintiff's motion to remand, ruling that "A plaintiff may not defeat federal jurisdiction by omitting or

neglecting to include reference to federal statutes which are an essential part of the lawsuit; and that on motion to remand case to state court, defendant carries the furden of demonstrating that plaintiff's complaint arises under federal law."

Where the instant parties are now before the court, the defendant Allen Counard has made no showing that Plaintiff's complaint arises under federal law; thus, defendant-Allen Counard was not entitled to "remand."

In Bridgeport Ed. Ass'n v Zinner, 415 F Supp 715 (1976) the court said " * * * good case could be made for removal even without such unanimity since statutory language specifies that case may be removed by "the defendant" and since such civil rights removal represents longstanding judgment by Congress that defendants in certain types of civil rights cases should be able to remove cases to federal courts" and where not all defendants joined in petition for removal. "Cramer" herein does not mean to infer any racial discrimination of "any act" as used in the statute permitting removal of case where state law by its terms requires the denial of equal rights when forced to hire an attorney; that such denial of equal rights is implemented purposefully by that class-based, invidiously discriminatory group called "attorneys". It is interesting to note that the United States District Court denied the motion to remand on behalf of the mortgagee-Metropolitan and their attorneys, which is not appealable.

"Cramer" herein urges that the said Co-defendant Allen Counard not be separated from the whole of the case, so as to enable the minimization and/or elimination of the drastic effect of confusion in this case.

WHEREFORE Plaintiff-appellant Virginia Cramer, in pro per, prays that this Honorable court will deny the motion to dismiss appeal, and for the reasons as above shown that this court does not lack jurisdiction.

Respectfully submitted,
/s/ Virginia Cramer,
Plaintiff-appellant
Defendant in wrongful foreclosure, In Pro Per

Dated:
April 2, 1980

Filed April 7, 1980 No. 80-1118
United States Court of Appeals
for the Sixth Circuit

PLAINTIFF'S REPLY IN OPPOSITION TO OBJECTIONS OF DEFENDANT-APPELLEE COUNARD TO PLAINTIFF'S MOTION FOR STAY PENDING REVIEW

Comes now Plaintiff-Appellant Virginia Cramer, in pro per, and in reply in opposition to Defendant-Counard's objections to Plaintiff's motion for Stay Pending Review, Plaintiff-appellant says as follows:

First, the attorneys for Defendant-Counard (who is also an attorney, formerly representing client-Virginia Cramer in the prior action No. 115-792 Wayne County Circuit Court, and ultimately reported at 401 Mich 252) have misrepresented and misquoted 28 USC 1447 (d) which is correctly states as follows:

> "An order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise, except an order remanding a case to the state court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise." (emphasis added)

The above said provision does not state "to the state cour to which it was removed" and the court herein should not tolerate said misrepresentation and deliberate misquote by said attorneys.

FACTS:

Petitioner-Cramer sought "removal" of the State case to the United States District Court while the said case was pending in the Michigan Supreme Court. Petitioner-Cramer further filed a non-identical Complaint for Declaratory Judgment (among other pleadings) together with the Petition for Removal. Defendant-Counard was personally served with process with Complaint and Summons as filed and issued in the United States District Court, by the United States Marshal.

Defendant Counard never answered to the said Complaint. Instead Defendant Counard, by his attorneys, filed:

Motion for Remand of Above-Captioned Action
Motion to Exercise Discretion in Favor of Abstention and Dismissal of Declaratory Complaint

The "Order of Dismissal In Part and Order of Remand In Part" entered in the United States District Court on January 17, 1980, in no way infers that the federal action against Defendant Allen Counard be joined with the State action, in the State court.

From six (6) pages of docket entries in said Federal district court, Docket No. 79-72789, it shows, in part, as follows:

* * *

1979	Sept 18	33.	Letter from Corbin Davis (Supreme Court) re: motions pending in Supreme Court are to be deferred until U.S. District Court makes ruling. DD 9-19-79

* * *

1980 Jan 17 --- Deft's McFadden's motion for judgment on the pleadings heard and granted; Defts Selburns' Motion for judgment on the pleadings heard and granted; Deft's Federal Home Loan motion to dismiss granted; Deft Allen Counard's Motion to remand cause to Circuit Court, g granted. Deft Metro Savings Assoc's Motion to Dismiss, granted, Motion to remand denied; Deft's (Members of Supreme Court) Motion to dismiss granted.
DD 1-18-80 Taylor, J

* * *

ARGUMENT AND LAW:

The provisions in 28 USC 1447 (d) do not state "to the state court to which it was removed" and the court herein should not tolerate said misrepresentation and deliberate misquote by said attorneys. See, 7 Am Jur 2d, at 15. Discipline as a judicial function.

> "Independently of statute, and by reason of a necessary and inherent power to control the conduct of its own affairs and to maintain its own dignity, a court has summary jurisdiction to deal with the alleged misconduct of an attorney by suspending or disbarring him or by imposing other disciplinary measures on him."

See, 7 Am Jur 2d, at 4, Duties of office.

> "Above all, an attorney must exhibit good faith and honorable dealing with the court."

See, 7 Am Jur 2d, at 26, In relation to Court or Judge.

"Generally. The Court has inherent power to suspend or remove an attorney whose conduct tends to impede, obstruct, or prevent the administration of the law, or to destroy public confidence in such administration."

See, 7 Am Jur 2d, at 27, "* * * fabrication * * *. (A)n attorney may be suspended or disbarred for causing * * * to verify documents that the attorney * * * uses in a manner designed to deceive or mislead the court."

There is no inference in the "Order of Dismissal In Part and Order of Remand In Part" that the federal action against Defendant Allen Counard be joined with the State action in a State court. There is no authority which permits a federal action to be joined in a State court proceeding.

Furthermore, where a State case is remanded from a Federal court, it can be remanded only to the State jurisdiction from whence it came. There is no authority which permits a Federal court to remand a State case to a State jurisdiction other than "from whence it came." The Court erred in remanding to the Wayne County Circuit Court. The matter was pending in the Michigan Supreme Court. Prior law on removal of suits from State courts initiates from the Judicial Code of 1911, c. 231, 36 Stat. 1087, entitled "Act to codify, revise and amend the laws relating to the judiciary" provided in section 28, as amended, as follows:

" * * * Whenever any cause shall be removed from any State court into any district court of the United States, and the district court shall decide that the cause was improperly removed,

and order the same to be remanded to the State court from whence it came. * * * " (emphasis added)

Plaintiff-appellant's request for Stay of proceedings as to the state action should be granted forthwith. Plaintiff-appellant filed a non-identical complaint in the Federal court, with separable controversies. However, the charges of fraud, concealment and deception as to attorney malpractice are sl closely linked with charges of conspiracy and obstructing justice that Plaintiff-appellant can make no distinction between the separable controversies, because she is not a lawyer and therefore, not an expert.

Furthermore, the Michigan Supreme Court members refused to act on Petitioner-Cramer's motion to reverse, void or correct defective decision, as reported at 401 Mich 252.

Moreover, Plaintiff-appellant incorporates herein as though fully set forth her Objections to motion to dismiss appeal. She is in the process of preparing her Brief on appeal where these matters will be pointed out to the Court herein.

The Order entered in the United States District Court on January 17, 1980, remands to the wrong State jurisdiction; "removal" was sought pursuant to section 1443, from the State case as pending in the Michigan Supreme Court, Docket No. 62249. In the State case, there were no such allegations of conspiracy and obstructing justice, and therefore, the grounds in the federal action are not identical with the State action, and the Michigan Supreme Court members are included as defendants in said non-identical complaint. The Wayne Circuit Court would have no jurisdiction on said remand. Certainly, the Wayne County Circuit Court would

have no jurisdiction on joinder of the federal action where the said Complaint for Declaratory Judgment as filed in the United States District Court involves the Michigan Supreme Court decision as reported at 401 Mich 252.

Granting of Plaintiff's stay of proceedings in the State courts while the matter is pending on appeal in the United States Court of Appeals is necessary and additional inference to 28 USC 1447 (d) (involving 401 Mich 252) and to permit Plaintiff-appellant to appeal from the Order of the United States District Court in whole.

Respectfully submitted,
Dated: /s/ Virginia Cramer,
Apr 2, 1980 Plaintiff-appellant in pro per

Entered April 3, 1980
Michigan Supreme Court - No. 62249
Dated April 8, 1980

COA: 78-3794
LC: 78-822-879-CZ

On Order of the Court, plaintiff-appellant's motion for rehearing is DENIED because GCR 1963, 864.4, provides for filing of such motion only in opinion cases. Plaintiff-appellant's motion is treated as a motion for reconsideration of this Court's order dated May 3, 1979, and the motion is DENIED, because it does not appear to the Court that said order was entered erroneously.

The motion by the attorney for plaintiff-appellant for entry of an order allowing the attorney for plaintiff-appellant to withdraw is DENIED as moot.

/s/ Corbin R. Davis, Deputy Clerk
Michigan Supreme Court,
Lansing, Michigan

Entered May 3, 1979
Michigan Supreme Court No. 62249

COA: 78-3794
LC: 78-822-879-CZ

On order of the Court, plaintiff-appellant's motions for immediate consideration, for reconsideration, to reverse, and for oral argument are considered, and they are DENIED, because it does not appear that the questions presented should be reviewed by this Court.

The motions for actual attorney fees and for actual costs also are DENIED.

/s/ Corbin R. Davis, Deputy Clerk
Michigan Supreme Court
Lansing, Michigan

Filed April 14, 1980 No. 80-1118
United States Court of Appeals

MOTION TO EXTEND TIME FOR FILING OF PLAINTIFF-APPELLANT'S BRIEF

COMES NOW the Plaintiff-appellant in pro per, and moves the Court to grant extension of time until MAY 20, 1980, within which to file her Brief on appeal. In support of the motion, Plaintiff-appellant states that the elements, conditions and occurrances have rendered it impossible for her to prepare the brief for filing on/or before April 20, 1980, in accordance with the Office of the Clerk's letter dated March 11, 1980, and are as follows:

1. Additional and extra time spent in preparation of pleadings for filing in Wayne County Circuit Court, State of Michigan, due to harassment tactics imposed by

attorneys John P. Jacobs and Thomas M. O'Leary, representing Co-Defendant Allen Counard, in this same case; and where Plaintiff-appellant herein had to recover the Federal District Court original record from the Wayne County Circuit Court, for proper transmitting to the United States Court of Appeals, Sixth Circuit.

2. Additional and extra time spent in preparation of "Motion for Stay Pending Review" filed in the United States Court of Appeals, on March 17, 1980, and which is still pending.

3. Additional and extra time spent in preparation of "OBJECTIONS TO MOTION TO DISMISS APPEAL" and "PLAINTIFF'S REPLY IN OPPOSITION TO OBJECTIONS OF DEFENDANT-APPELLEE COUNARD TO PLAINTIFF'S MOTION FOR STAY PENDING REVIEW" due to harassment tactics imposed by attorneys John P. Jacobs and Thomas M. O'Leary, representing Co-Defendant Allen Counard, in this same case.

4. Failing eyesight of Plaintiff-Appellant, requiring periodic treatment, due to small print in research materials and law books, and while acting in her own representation and proper person because of the improbability and/or the impossibility of obtaining the professional services of a good lawyer, even though Plaintiff-appellant is able to pay for said legal services.

5. Defective physical health of Plaintiff-appellant caused by the strain endured in this case for a period of approximately twelve (12) years, and that Plaintiff-appellant is now sixty-one (61) years of age.

6. That additional and extra time was necessarily spent to line-up a special

printer (for printing of Brief) for necessary security reasons and so that said printer would be unknown to Plaintiff-appellant's opposition, in this case.

7. Illness and inclement weather which, at different times, delayed and/or prevented Plaintiff-appellant in making trips to a law library for researching the law in particular law books which your plaintiff-appellant does not have in her possession on her premises.

This motion is pursuant to FRAP Rule 31(a) and the Office of the Clerk's letter dated March 11, 1980, copy of which is attached hereto.

WHERE for the reasons above-stated and by supporting affidavit below, Plaintiff-appellant finds it essential to make this request to extend time for filing of Plaintiff-appellant's Brief on Appeal 30 days from April 20, 1980, or to May 20, 1980, and Plaintiff-appellant prays that the Court will grant said extension of time.

Dated: /s/ Virginia Cramer,
Apr 10,1980 Plaintiff-appellant in pro per

No. 80-1118
EXTENSION TO 5/20/80 GRANTED
Entered by the Clerk pursuant to Rule 4F
Sixth Cir. Rules, /s/ J. P. Hehman, Clerk.

Filed April 25, 1980 No. 80-1118
United States Court of Appeals
Sixth Circuit

MOTION TO DISMISS APPEAL

Appellee, the Federal Home Loan Bank Board,

its director and officers, by and through James K. Robinson, United States Attorney, and Samuel J. Behringer, Jr., Assistant United States attorney, respectfully move the Court to dismiss this appeal from the order of the United States District Court of the Eastern District of Michigan, Southern Division entered on January 17, 1980, taken by appellant by notice of appeal filed February 8, 1980, upon the ground that the appeal is not within the jurisdiction of the Court.

Respectfully submitted,
JAMES K. ROBINSON
United States Attorney
/s/ SAMUEL J. BEHRINGER, JR.
(P23751)
Undated Assitant United States Attorney

BRIEF IN SUPPORT OF MOTION TO DISMISS APPEAL

The Federal Home Loan Bank and Board, appellee, by and through its undersigned attorneys, submits this brief in support of its instant motion.

An assertion of jurisdiction in the federal court system was unsuccessfully attempted by the appellant by initiating a removal from the Michigan Supreme Court to the United States District Court for the Eastern District of Michigan. Accordingly, an order of dismissal was entered by the Honorable Anna Diggs Taylor in the Federal District Court on January 17, 1980. Appellant is presently attempting to invoke the jurisdiction of the United States Court of Appeals by lodging an appeal from that Order of Dismissal. Appellee herein asserts that the Court of Appeals has no jurisdiction to entertain an appeal where the record establishes a want of jurisdiction in district court. Taylor v Criminal District Court No. 4, 431 F2d 710 (5th Circ. 1970).

Statement of the Proceedings

This instant action requires attention to the proceedings in two different court systems.

A. STATE COURT PROCEEDINGS

In 1963 Cramer purchased a home with funds loaned by the Metropolitan Federal Savings and Loan Association and gave a mortgage to Metropolitan to secure the loan. (Plaintiff's Preamble paragraph 1, page 2). A dispute subsequently developed between Cramer and Metropolitan which caused Metropolitan to commence proceedings to foreclose the mortgage given by Cramer by advertisement in May of 1968. (Plaintiff's Preamble paragraphs 2-10, pages 2-5).

I. WAYNE COUNTY CIRCUIT COURT CIVIL ACTION NO. 115-702 (sic, 115-792)

Cramer disputed the propriety of the foreclosure and eventually commenced a civil action in the Wayne County Circuit Court of the State of Michigan to, among other things, enjoin the foreclosure sale. (Plaintiff's Preamble, paragraph 33). The action was designated as Civil Action No. 115-792 and was styled:

VIRGINIA CRAMER, Plaintiff

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation
Defendant.

This pleading did not include the Federal Home Loan Bank Board or any of its directors or officials as party-defendants. At this point in time Cramer was represented by counsel.

In subsequent proceedings in that court, a restraining order which had been issued was dissolved, a finding of default was made, and Metropolitan was permitted to proceed to sale. (Plaintiff's Preamble, paragraphs 34 and 36, pages 9-10). After subsequent proceedings, a Judgment adverse to Cramer was entered which she appealed to the Michigan Court of Appeals. (Plaintiff's Preamble, paragraphs 38-42, pages 10-11).

The Michigan Court of Appeals reversed the Circuit Court and remanded the cause back to the latter court for further proceedings. At this point, Cramer received permission from the court to file an Amended Complaint styled as:

VIRGINIA CRAMER, Plaintiff,

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a United States corporation, James I. McClintock, Chairman of Board of Directors, Roger C. Richards, President John C. Denyer, Asst Vice-President JOHN DOE, Members of the Board of Directors RICHARD ROE, Vice-President and ALL OTHER OFFICERS OF METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, Defendants

This Amended Complaint did not include the Federal Home Loan Bank Board or any of its directors or officials as named party-defendants. It also did not include any members of the Michigan Supreme Court or the individually named attorneys.

In the course of proceedings upon the Amended Complaint, Cramer availed herself of discovery and participation in pretrial proceedings. (Plaintiff's Preamble paragraphs 44-45, pages 11-12). She was now represented by new counsel, Allen Counard.

Cross motions for summary judgment came to be heard. On February 7, 1972 the Circuit Court ruled against Cramer and entered judgment in favor of Metropolitan of all counts.

A second appeal was lodged with the Michigan Court of Appeals from the February 7, 1972 determination which resulted in an affirmation of the Circuit Court's decision on all counts except Count IV. The matter was therefor remanded back to the Circuit Court for further proceedings upon Count IV. (Plaintiff's Preamble paragraphs 54, page 14).

Cramer initiated her third appeal through the state court system. On October 6, 1977 the Michigan Supreme Court affirmed in favor of Metropolitan. Cramer v Metropolitan, 401 Mich 252 (1977). Two rehearing requests were denied by the Michigan Supreme Court on December 15, 1977 and February 1, 1979. (Plaintiff's Preamble paragraph 58, page 15).

Procedding in pro per, Cramer then sought certiorari from the Supreme Court of the United States on April 27, 1978. The United States Supreme Court denied her petition on June 12, 1978.

II. WAYNE COUNTY CIRCUIT COURT CIVIL ACTION NO. 78-822-879 CZ

Following the United States Supreme Court denial of her certiorari petition, Cramer initiated a second action in the Wayne County Circuit Court on July 14, 1978. It was designated as Civil Action No. 78-822-879-CZ and was styled as:

VIRGINIA CRAMER, Petitioner-Defendant
(in wrongful foreclosure action)
Petitioner-Plaintiff

VS

METROPOLITAN SAVINGS ASSOCIATION
a/k/a METROPOLITAN FEDERAL SAVINGS AND
LOAN ASSOCIATION, JAMES I. McCLINTOCK,
ROGER C. RICHARDS and JOHN C. DENYER,
Jointly, severally and individually,
Plaintiffs in wrongful foreclosure action,

Defendants.

and
McCLINTOCK DONOVAN CARSON & ROACH and
JAMES I. McCLINTOCK, MICHAEL DOELLE
and WILLIAM P. THORPE, attorneys at law,
jointly, severally & individually

Co-Defendants.

and
ABEL SELBURN, ALLEN COUNARD and
WILLIAM R. McFADDEN, attorneys at law,
jointly, severally and individually,

Co-Defendants.

This pleading did not include the Federal Home Loan Bank Board or any of its directors or officials as party-defendants. Cramer did not prevail in obtaining the relief sought in this second civil action. Appeal was again pursued through the state court system. On February 7, 1979, the Michigan Supreme Court denied Cramer leave to appeal and, on May 3, 1979, denied her motions to reconsider that denial and for other relief. (Plaintiff's Preamble paragraph 67, pages 18-19). Yet another counsel (William R. McFadden) was retained by Cramer who filed two motions on May 23, 1979 with the Michigan Supreme Court. McFadden also filed a third motion to withdraw as counsel.

B. FEDERAL DISTRICT COURT PROCEEDINGS

While Cramer awaited a disposition upon the three motions she had pending before the Michigan Supreme Court in her second civil action, she initiated a removal from the Michigan Supreme Court to the federal district court. The particular events of this removal were as follows;

I. THE REMOVAL

On July 20, 1979 Cramer, proceeding in pro per, filed a Petition for Removal of Cause from the Michigan Supreme Court to the United States District Court for the Eastern District of Michigan. It was designated by the Clerk of the Court for the United States District Court for the Eastern District of Michigan as Civil Action No. 9-72789. As presented by Cramer, the removal petition identified each of the two state circuit court civil actions by their respective circuit (115-792 and 78-822-879 CZ) and appellate court numbers. The parties were styled as:

VIRGINIA CRAMER, Petitioner-Defendant
(in wrongful foreclosure action)
Petitioner-Plaintiff,

VS

METROPOLITAN SAVINGS ASSOCIATION, a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, severally and individually, Plaintiffs in wrongful foreclosure action,
Defendants

and

McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, attorneys at law, jointly, severally & individually,
Co-Defendants

and

ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, attorney at law, jointly, severally and individually,
Co-Defendants

and

FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge
Co-Defendants

and
MICHIGAN SUPREME COURT Members, Justices Mary C. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., jointly, severally and individually,
Co-Defendants.

This is the first time in more than eleven years of litigation that either the Federal Home Loan Bank Board, the Michigan Supreme Court or any of its individual Justices were named as party-defendants to these proceedings. The files of all proceedings did not include any order permitting the joinder of these parties either prior to or after removal by either a judge in the state court system or of the federal district court.

II. COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, AND MONEY DAMAGES FOR INJURY TO PERSON AND PROPERTY AND DEMAND FOR TRIAL BY JURY.

On the same date that Cramer filed her removal petition, she also filed as part of the removed action a Complaint for Declaratory Judgment, Reversal of Michigan Supreme Court Decision, Injunctive relief and Money Damages for Injury to Person and Property and Demand for Jury Trial. This 19 page Complaint appeared incomplete in that it consisted of 68 numbered paragraphs which ended at page 19 without a clause for relief. It was styled:

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VIRGINIA CRAMER, Petitioner Plaintiff — CIVIL ACTION NO. 9-72789

VS

METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, jointly, severally and individually, Defendants	Mich Supreme Court No. 62249
and McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, attorneys at law, jointly, severally & individually, Co-Defendants	Wayne Cir Ct No. 78-822-879 CZ (Commenced 7-14-78)
and ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, attorney at law, jointly, severally and individually, Co-Defendants	Prior Action (Wayne) No. 115-792
and FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge Co-Defendants	Mich Supreme Ct No. 57215 reported at: 401 Mich 252
and MICHIGAN SUPREME COURT Members, Justices Mary S. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., jointly, severally and individually, Co-Defendants	

COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY AND DEMAND FOR TRIAL BY JURY

III. COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF, (INTERVENTION) AND MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY.

A second complaint was also filed as part of the removed action. This complaint consisted of 35 pages and 12 numbered paragraphs. It was styled:

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION-DETROIT

VIRGINIA CRAMER, Petitioner Plaintiff	CIVIL ACTION NO. 9-72789
VS	
METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, et al Defendants	Mich S Ct No. 62249
and	Wayne Cir Ct 78-822-879 CZ
McCLINTOCK DONOVAN CARSON & ROACH et al - Co-Defendants	(Commenced 7-14-78)
and	Prior Action
ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, attorneys at law, jointly, severally and individually, Co-Defendants	(Wayne)- No. 115-792
and	Mich S Ct No. 57215 reported at: 401 Mich 252.
FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge Co-Defendants	
and	
MICHIGAN SUPREME COURT Members, Justices Mary C. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., jointly, severally and individually, Co-Defendants.	

COMPLAINT FOR DECLARATORY JUDGMENT, REVERSAL OF MICHIGAN SUPREME COURT DECISION, INJUNCTIVE RELIEF (Intervention) and MONEY DAMAGES FOR INJURIES TO PERSON AND PROPERTY

This second complaint asserted, in part, that the Federal Home Loan Bank Board encouraged and allowed improper conduct by its insured and thereby purported to allege state and federal constitutional issues and conspiratorial design.

BASIS UPON WHICH SUBJECT MATTER AND PERSONAL JURISDICTION WAS LACKING IN UNITED STATES DISTRICT COURT

A. PLAINTIFF COULD NOT UNILATERALLY JOIN NEW DEFENDANTS AS PART OF THE REMOVED CASE OR SUBSEQUENT TO REMOVAL WITHOUT LEAVE FROM THE COURT.

When Cramer removed the proceedings in Wayne County Circuit Court Civil Action 78-822-879 CZ (or 115-792) to the federal district court, the removed civil action had never previously included either the Federal Home Loan Bank Board (or any of its directors or officers) or the Michigan Supreme Court or any of its Justices as party-defendants. The files of both state court actions do not include any order which granted Cramer leave from either court to join these particular parties as defendants in either action.

Rather, review of the pleadings indicates that Cramer unilaterally joined these particular parties as she drafter her removal pleadings and two post-removal complaints. The simple fact is that the Federal Home Loan Bank Board and the members of the Michigan Supreme Court were never parties to the removed action prior to the removal. The state courts never had jurisdiction over these defendants, and the Federal district court also had no jurisdiction over these same defendants.

Prior to removal, Cramer had to seek

leave from the state courts under the appropriate Michigan General Court Rules to join these new defendants. GCR 118, 204.2 and 205. She never sought such leave, it was never granted to her by any state court, and opposing counsel never so stipulated.

Subsequent to removal, Cramer could not unilaterally join these parties as defendant but is required by Federal Rules of Civil Procedure Rule 21 to seek leave to join such new parties. Spencer v Dixon, 290 F Supp(W.D. La. 1968); Perry v Snyder, 33 F.R.D. 361 (E.D. Penna. 1963). She never sought such leave from this Federal district court, it has never been granted to her and the parties have never so stipulated.

B. PLAINTIFF COULD NOT UNILATERALLY FILE TWO NEW COMPLAINTS AS PART OF THE REMOVED ACTION.

The plaintiff caused her two post-removal complaints to be designated as part of removed Civil Action 9-72789. The problem with such a tactic is that Cramer never obtained leave from the federal district court to expand the controversy posed by her removed civil action to include two new additional complaints. Whether viewed as joined or amended complaints, leave had to be obtained from the Federal district court before the two additional complaints could be filed as part of Civil Action No. 9-72789. Federal Rules of Civil Procedure Rules 15(a) and 21. Perry v Snyder, 33 F.R.D. 361 (E.D. Penn. 1963).

C. PLAINTIFF HAS NO SUBSTANTIVE RIGHT OF ACTION AGAINST THE FEDERAL HOME LOAN BANK BOARD.

The Federal Home Loan Bank Board cannot

be a party defendant pursuant to Federal Rules of Civil Procedure Rule 12 due to a lack of jurisdiction on the part of this Court over the person and subject matter and a failure to state a claim upon which relief can be granted. Three points augment this argument.

I. THE FEDERAL HOME LOAN BANK BOARD CANNOT BE SUED BY THIS PLAINTIFF.

First, the Federal Home Loan Bank Board is an independent agency in the executive branch of the Federal government. 12 U.S.C. 1437. It was created to provide at all times a flexible credit reserve for member savings institutions engaged in home mortgage lending. 12 U.S.C. 1421. Being a federal agency the rule is noted that the United States, as sovereign is immune from suit save as it consents to be sued and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit. United States v Sherwood, 312 U.S. 584, 586 (1940). Where Congress has not authorized a government entity to be sued eo nominee, the entity cannot be sued. Blackmar v Guerre, 342 U.S. 512, 517 (1951). The only express waiver of sovereign immunity which permits suit against the Federal Home Loan Bank Board allows the Bank Board to be sued only "by any Federal savings and loan associations or director or officer thereof. . . " 12 U.S.C. 1464(d)(1) 1/. Plaintiff Cramer is not such an entity or actor. The recent change in the statute 2/ has been interpreted by the courts as a clear indication by congress to limit the type of parties

1/ Prior to October 16, 1966, Section 1464(d)(1) of Title 12, U.S.C., read that "(T)he Board shall have the power to sue and be sued, complain and defend in any court of competent jurisdiction in the United States."

2/ Footnote 1, supra.

that may sue the Board to just Federal savings and loan associations and officers and directors thereof. Chase Sav. & Loan Assn. v. Federal Home Loan Bank Board, 269 F Supp 965 (ED Pa. 1967). Moreover, courts have recognized that:

> "It is clear that the amendment to 12 U.S.C.A. 1464(d)(1) indicates an intent by Congress that the Board not be liable for money damages, regardless of who the plaintiff might be. S. Rep. 1482, 89th Cong., 2d Sess., reprinted in 1966 U.S. Code Cong. & Admin. News, pp. 3532, 3541. Central Savings & Loan Assn. v Federal Home Loan Bank Board, 293 F Supp 617, 621 (S.D. Iowa 1968).

It is therefore well settled in the law that this individual plaintiff may not sue the Federal Home Loan Bank Board for any relief. Central Savings & Loan Ass'n v. Federal Home Loan Bank Board, 293 F Supp. 617 (S.D. Iowa 1968), aff'd, 422 F 2d 504 (8th Cir. 1970). Putting aside the fact that one of her two complaints is incomplete, neither complaint can state a cause of action against the Board because this court has no jurisdiction over the person and subject matter. Pursuant to Federal Rules of Civil Procedure Rule 12(b), both the complaints were properly dismissed insofar as both concern the Federal Home Loan Bank Board.

II. THE BASIS OF PLAINTIFF'S SUITS DO NOT STATE A CLAIM UPON WHICH RELIEF CAN BE BASED.

Assuming arguendo that an examination of plaintiff's two actions goes even further, it is respectfully submitted that the plaintiff's allegations against the Board do not state any claim upon which relief

can be granted.

Plaintiff's two complaints cite the Fifth and Fourteenth Amendments, 42 U.S. 1983, 1985, 1986 and 1988, 28 U.S.C. 1343, 12 U.S.C. 1461, 12 U.S.C. 1701, 15 U.S.C. 61 and 28 U.S.C. 1441 are jurisdictional basis. None of these statutes found jurisdiction in the district court. As concerns 15 U.S.C. 1, the United States and its agencies not not violate the Sherman Antitrust Act. Eastern RR Presidents Conference v Noerr Motor Freight, Inc., 365 U.S. 127 (1961); Adams v American Bar Ass'n., 400 F Supp. 219 (D.C.N.J. 1975). 12 U.S.C. 1701, et seq., only pertains to the Secretary of Housing and Urban Development which is an entirely different entity then the Federal Home Loan Bank Board. 12 U.S.C. 1461, as pointed out above, only allows the Board to be sued by Federal savings and loan associations. Savings & Loan Ass'n v Federal Home Loan Bank Board, 293 F.Supp 617, 621 (SD Iowa 1968). Cramer's civil rights jurisdictional citations (28 U.S.C. 1343 and 42 U.S.C. 1983, 1985, 1986 and 1988) also fail to meet jurisdiction in the Federal District Court because, assuming other things, the statute of limitations for bringing such an action expired.

No federal statute provides any limitation period to actions under the Federal Civil Rights Act. Therfore, "the time for filing an action under the Federal Civil Rights Act is controlled by the applicable state statute of limitations." West v Board of Education, 165 F Supp 382 (D.C. Md. 1958). Federal courts indicate that the applicable period of limitations in a civil rights action is that period which state courts would apply if the action were brought in a state court under state law. Mulligan v Schlachter, 389 F 2d 231 (6th Cir. 1968).

Under the law of the State of Michigan, civil rights actions are subject to a three (3) year statute of limitations. Krum v Sheppard, 407 F 2d 490 (6th Cir. 1967); Gordon v City of Warren, 415 F. Supp. 556 (E.D. Mich. 1976). The movant submits that if this action is viewed as being a civil rights action it is barred by the statute of limitations because the plaintiff failed to timely file suit within the provided three year period. The 19 page (Non-intervention) Complaint (which appears to be incomplete) failed to even mention the Federal Home Loan Bank Board outside of its caption. The "Intervention" Complaint complained of an alleged "premature, precipitous and fraudulent" foreclosure on May 23, 1968 (paragraph 7.28 page 23) and then subsequently complained (at paragraph 9.18 and 9.19) that the Federal Home Loan Bank Board was engaged in a conspiracy due to its Board precluded diversity jurisdiction in the federal district court. See Section C1 above. The Cramer assertion that "Federal jurisdiction is founded on the extant controversy of a civil rights question . . . the enforcement of MCLA 600.3201 et seq . . . and the U. S. Constitution, Amendments Fifth and Fourteenth . . . " (para. 1.7) was not sufficient in light of the above to vest jurisdiction in the Federal District Court. The statute of limitations had expired as to the new post-removal defendants and complaints. And, with regard to the pre-removal matters, the controversy had already been adjudicated several times.

CONCLUSION

Cramer abused the removal process and also failed to properly respect the roles of the various courts and her opposing counsel in participating in the procedural processing of this litigation. As a party-plaintiff,

Cramer had absolutely no right to remove her state court action or actions to the Federal District Court. And, after removal, Cramer had absolutely no right to unilaterally join new parties and file two new complaints as part of the removed action involving either the Board or the Members of the Michigan Supreme Court. The post-removal parties and complaints required obtaining leave from the Federal district court before the joinder and filing. The district court was therefore entirely proper in dismissing her action.

Since the record establishes a want of jurisdiction in the Federal District Court, this Court of Appeals has no jurisdiction to entertain appeal. Accordingly the entire appeal should be dismissed.

Respectfully submitted,
JAMES K. ROBINSON
United States Attorney
/s/ SAMUEL J. BEHRINGER, JR.
Undated (P23751) Assistant United States Attorney

CERTIFICATE OF SERVICE

Tjis is to certify that copies of Motion to Dismiss Appeal, Brief In Support of Motion to Dismiss Appeal and this Certificate of service were placed in government franked envelopes addressed to: Virginia Cramer, 27314 Clairview, Dearborn Heights, MI 48127; Abel J. Selburn, Attorney at Law, 407 Northland Towers West, Southfield, MI 48075; Allen J. Counard, Attorney at Law, Suite 1214, 26555 Evergreen Road, Southfield, MI 48076; McClintock, Donovan, Carson & Roach, 2150 Guardian Building, Detroit, MI 48226; Thomas M. O'Leary, Attorney at Law, 1000 Guardian Building, Detroit, Michigan 48226; Frank J. Kelly, Attorney General, George H. Weller, Assis-

tant Attorney General, 7th Floor, Law Building, 525 West Ottawa, Lansing, MI 48913; and William R. McFadden, Attorney at Law, Suite 111, 1500 N. Woodward Avenue, Birmingham, MI 4804, which were subsequently sealed and placed in a United States Postal Service mail receptacle located in or near the Federal Building and U.S. Courthouse in Detroit, Michigan on the same date that the above named pleadings were filed with this court.

JAMES K. ROBINSON
United States Attorney
/s/ SAMUEL J. BEHRINGER, JR.
(P23751) Assitant United
Undated States Attorney

EXHIBIT 1 (Letter)

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL
FRANK J. KELLEY, Attorney General
Lansing 48913
May 1, 1980

John P. Hehman, Clerk
United States Court of Appeals for the Sixth Circuit
502 Post Office and Courthouse,
Cincinnati, Ohio 45202

Re: Cramer v Metropolitan Savings et al, #80-1118

Dear Mr. Hehman:

I have received the April 23, 1980 motion and brief on behalf of the Federal Home Loan Bank Board in which the Federal Home Loan Bank Board refers to the Michigan Supreme Court in relation to Mrs. Cramer's State

Court action that Mrs. Cramer tried to remove to the federal district court.

The position of the Michigan Supreme Court is that it never was and is not now a party to the state court proceeding involving Mrs. Cramer and that it need not do anything in relation to that proceeding in any court, including the United States Court of Appeals for the Sixth Circuit.

The Michigan Supreme Court was a defendant in the original of case number 79-72789, United States District Court for the Eastern District of Michigan in which the complaint was filed on July 17, 1979, and need respond in the Sixth Circuit only to any matter involving that federal case insofar as it concerns the original action in the Eastern District of Michigan.

Sincerely,
Frank J. Kelley, Attorney General
by: /s/ George H. Weller
Assistant Attorney General
Counsel for defendant
Appellee Michigan Supreme Court
793 Law Building
525 W. Ottawa
Lansing, Michigan 48913
(517) 373-8060

CC: Mrs. Cramer
Clerk, U.S. Dist. Ct. ED Mich #972789
Assistant U.S. Attorney Behringer
Mr. Abel Selburn
Mr. William McFadden
Mr. William P. Thorpe

Filed May 6, 1980 No. 80-1118
United States Court of Appeals
for the Sixth Circuit

OBJECTIONS TO MOTION TO DISMISS APPEAL

PLAINTIFF-APPELLANT'S OBJECTIONS TO FEDERAL HOME LOAN BANK BOARD'S MOTION TO DISMISS APPEAL

Plaintiff-appellant, Virginia Cramer, in pripria persona, objects to Co-Defendant-appellee's motion to dismiss appeal, and the said motion should be rejected and denied upon the ground that the appeal is most definitely within the jurisdiction of the Court shown herein as follows:

1. That the Federal Home Loan Bank Board is an indispensable party in this case and pursuant to 28 USCA 1337, 12 USCA 1451, 1452, et seq., 12 USCA 1461, 1464, et seq., and 15 USCA 4 and 5, and that matters dealing with diversion of funds is within the scope of investigatory authority of the Federal Home Loan Bank Board, and with respect to regulations promulgated by the Federal Home Loan Bank Board having the force and effect of law and subject to judicial review. (Regulations made or promulaged by unknown persons.)

2. That the plaintiff-appellant's Complaint (one Complaint in two sections; not two Complaints) as filed in the United States District Court on July 17, 1979 (not July 20, 1979) and pursuant to Rule 3 of the Federal Rules of Civil Procedure, is and was within the jurisdiction of the United States District Court, by diversity and otherwise. See, 15 USCA 4 and 5.

3. That pursuant to Federal Rules of Civil Procedure, Rule 81 (c), Petitioner-Cramer removed the Michigan State case (Wayne Circuit Court No. 78-822-879 CZ and Michigan Supreme Court No. 62249) while it was pending in the Michigan Supreme Court jurisdiction, to the United States District Court No. 79-72789, ex parte, and also on July 17, 1979, she simultaneously filed a

non-identical new Complaint pursuant to Rule 3, FRCP.

4. The new non-identical complaint, filed pursuant to Rule 3, FRCP, added and included other parties and other causes (who and which were not a part of the State Case as "removed") and which included, among others, the Federal Home Loan Bank Board, Director and/or Official and/or Officer in Charge, and who was served with process by the United States Marshal, and service of process upon the United States Attorney, Department of Justice, by said United States Marshal, together with Summons and Complaint, on July 18, 1979.

5. That the parties added and included as Co-Defendants in the new Complaint filed pursuant to Rule 3 (and who were not parties to the "removed" State case) are as follows:

i. Abel Selburn, Attorney at law (mortgagor-Cramer's first attorney)

ii. William R. McFadden, Attorney at law (mortgagor-Cramer's third attorney)

iii. Federal Home Loan Bank Board, Director and/or Official and/or Officer in Charge,

iv. Michigan Supreme Court members, et al (7)

6. That the Federal Home Loan Bank Board, et al, never answered to the Complaint (filed pursuant to FRCP, Rule 3); that instead of answering to said Complaint, the United States Attorney's office filed only a "Motion to Dismiss Post-Removal Additional Defendants and Complaints and Remand Original Proceeding." (While "apple-polishing" to the members of the Michigan Supreme Court.)

7. That the Federal Home Loan Bank Board were not parties to the "removed" State case to the United States District Court (which was pending in the jurisdiction of the Michigan Supreme Court No. 62249 at the time of "removal".

8. That the Federal Home Loan Bank Board, et al, had no standing to motion for dismissal and remand for the reason that they were not parties to said "removed" State case-(Wayne County Circuit Court No. 78-822-879 CZ and Michigan Supreme Court No. 62249).

9. That the Federal Home Loan Bank Board et al, by their attorneys, failed to plead and defend as to the Complaint filed pursuant to Rule 3.

10. That the State rules of procedure became inoperative when the State case (Wayne County Circuit Court 78-822-879 CZ and Michigan Supreme Court No. 62249) was removed to the United States District Court pursuant to Rule 81 (c), and the Federal Rules of Civil Procedure became applicable and effective, pursuant to Rule 3, et seq., Rule 4, et seq., FRCP.

11. That the Co-Defendant-appellee-Federal Home Loan Bank Board's attorneys (specifically Samuel J. Behringer, Jr. P23751) have submitted a brief with their motion to dismiss appeal which is replete with false facts, and such conduct of Mr. Samuel J. Behringer, Jr. reflects adversely upon his fitness to practice law; that this Honorable court should exercise its authority to effect disciplinary measures and proceedings against said attorney Samuel J. Behringer, Jr. P23751, and for - misconduct detrimentally reflective against the Department of Justice, representatively; that his brief in support of motion

to dismiss appeal is intended to mislead and deceive the court; that it is obvious to your Plaintiff-appellant that Mr. Samuel J. Behringer, Jr. P23751 has probably collaborated with one or more of the attorneys for Defendant-Metropolitan Savings and Loan who have consistently and continually misled and deceived the Michigan State courts; that various and several matters as stated in said brief submitted by Mr. Samuel J. Behringer, Jr. on behalf of the Federal Home Loan Bank Board, and pertaining to the prior action between mortgagor-Virginia Cramer and mortgagee-Metropolitan, are not within the personal knowledge of said Samuel J. Behringer, Jr.; that the said Samuel J. Behringer, Jr. has failed and neglected to investigate facts and law and his pleadings are designed to deceive the court and to impose harassment tactics upon your appellant herein.

12. That the within motion to dismiss appeal by Mr. Samuel J. Behringer, Jr., on behalf of the Federal Home Loan Bank Board, should be rejected by this Honorable court.

13. That the new Complaint (one Complaint in two sections, not two Complaints) which added and included the Federal Home Loan Bank Board, filed pursuant to Rule 3 of the Federal Rules of Civil Procedure is within the jurisdiction of the federal courts (filed simultaneously with ex parte Petition for Removal of Michigan State case No. 62249 pursuant to Rule 81 (c). That the United States District Court erred in jurisdictional matters; that the Federal courts have jurisdiction pursuant to 28 USCA 1337, 28 USCA 1346 (2), 28 USCA 1343; 12 USCA 1461, 1464, et seq., 12 USCA 1452 (a), (b) (7), 12 USCA 1437 (a) (b), 12 USCA 1438 (c) (6), and by Act of Congress amendment dated May 25, 1967, Pub. L. 90-19, 81 Stat. 29, which provides that:

"Any function or authority vested in or exercisable by the Federal Home Loan Bank Board, the Chairman thereof, or the Federal Savings and Loan Insurance Corporation immediately before the enactment of this Act shall not by this section or anything therein be affected - or impaired, or subjected to any restriction or limitation to which it was not then subject." (dated May 25, 1967)

14. That your plaintiff-appellant has standing in this case since she herself, as mortgagor, has been injured by the wrongdoing of a mortgagee (Metropolitan Federal Savings and Loan) where said mortgagee claimed they are "bound by federal regulations to require "escrow" and that they are bound to do nothing with said "escrow" funds belonging to the mortgagor ; that thus, the mortgagee may not be required to voluntarily adhere to the covenant and agreement to pay taxes and insurance with the mortgagor's "escrow" funds."

15. That the aforementioned "federal regulations" are made and promulgated under the direction of the Federal Home Loan Bank Board and with respect to its functions and vested authority, the Federal Home Loan Bank Board is included in the terms "wholly owned Government corporations" and "Government corporations" whenever used. 12 USCA 1438 (6). See, 15 USCA 4 and 5.

16. That by Act of Congress enacted as (short title) "Federal Home Loan Mortgage Corporation Act" and amending section 1464 of Title 12, effective November 10, 1978, Section 1703 of Pub. L. 95-630, it is specifically authorized by Congress that the "body corporate shall be under the direction of a Board of Directors composed of the members of the Federal Home Loan Bank Board" and that the Corporation shall

have power to sue and be sued, complain and defend, in any State, Federal, or other court, pursuant to 12 USCA 1452 (a) and (b) (7).

17. That prior to re-organization enactments by Congress, dated October 16, 1966, the Federal Home Loan Bank Board enjoyed the status that "the Board shall have the power to sue and be sued, complain and defend in any court of competent jurisdiction in the United States" pursuant to 12 USCA 1464 (d) (1); that by amendment enacted by Congress dated May 25, 1967, Pub. L. 90-19, the functions and vested authority to sue and be sued remained the same, unaffected and unimpaired.

WHEREFORE this Honorable court must deny the Federal Home Loan Bank Board's motion to dismiss appeal on jurisdictional grounds, and specifically for the reasons that the Federal courts do, indeed, have jurisdiction.

Respectfully submitted,
/s/ Virginia Cramer, Petitioner-appellant, In Pro Per

Dated:
Apr 27, 1980

APPELLANT'S BRIEF IN SUPPORT OF OBJECTIONS TO FEDERAL HOME LOAN BANK BOARD'S MOTION TO DISMISS APPEAL

Plaintiff-appellant, Virginia Cramer, in pro per, submits this brief in support of objections to Federal Home Loan Bank Board's motion to dismiss appeal, and she states that the United States District Court erred in jurisdictional areas, and that dismissal was in error, and Plaintiff-appellant states as follows:

BACKGROUND OF FACTS

Mortgagee-Metropolitan Federal Savings

and Loan repeatedly failed and neglected to pay mortgagor-Cramer's taxes and insurance when due and mishandled mortgagor-Cramer's "escrow" funds in 1963, 1964, 1965 and 1967. Further, in the interim, mortgagee-Metropolitan required "excessive escrow" (called cushioning in the industry) which mortgagor-Cramer disputed and recalculated. Mortgagee-Metropolitan further, refused to furnish mortgagor-Cramer with receipts or copies of receipts to account for said "escrow" funds. During the 56 month period of the said mortgage, mortgagor-Cramer never failed to pay "escrow" moneys each and every month together with principal to reduce the loan indebtedness and interest thereon, in accordance with the monthly-installment payment cards as furnished by mortgagee to mortgagor. Further, mortgagor-Cramer paid well ahead of her repayment schedule by doubling and/or tripling payments of the monthly installment. The mortgagee-Metropolitan had complete and sole control as to the allocation of mortgagor's moneys, and they credited mortgagor-Cramer's "escrow" account each and every month without fail.

On or about May 10, 1968, mortgagor-Cramer disputed mortgagee's requirement for "excessive escrow" which would have been approximately double the amount which would have been needed to pay taxes and insurance for the current year of 1968, if mortgagor-Cramer had paid without questioning mortgagee. At this point in time, there were no taxes or insurance due; none were assessed, none were billed, and none were unpaid. Nothing was due; nothing was unpaid.

Also, at this point in time, there was a credit balance in mortgagor-Cramer's "escrow" account: -there was no deficiency. Further, mortgagor-Cramer complained to mortgagee-Metropolitan that they had repeatedly allowed

her taxes and insurance to become seriously delinquent in 1963, 1964, 1965 and 1967 - (nothing was paid in 1964 from mortgagor-Cramer's "escrow" funds) even though the "escrow" funds were deposited and available; and further, that Metro's current "requirements" for "escrow" funds were excessive. Mortgagor-Cramer requested that she be permitted to pay her own obligations and liabilities for taxes and insurance, - instead of paying "escrow" moneys to mortgagee-Metropolitan to mishandle.

Without any prior notice or demand, - mortgagee-Metropolitan caused to be published "Notice of Mortgage Sale" on May 23, 1968, and at which time there was a surplus credit balance in said mortgagor's "escrow" account, and according to the terms in the mortgage note the current monthly installment payment for May 1968 could be paid on/or before May 30, 1968, without penalty or late charges. Mortgagee-Metropolitan refused to credit mortagor-Cramer's current monthly installment payment on May 29, 1968, and never returned said check. Mortgagor-Cramer first learned of the mortgage foreclosure by advertisement on June 1, 1968, by the posted "Notice of Mortgage Sale." Subsequently, mortgagee-Metropolitan refused to accept any moneys from mortgagor-Cramer "on account of the foreclosure."

STATE COURT PROCEEDINGS - Civil Action No. 115-792 (Prior action)

On August 12, 1968, mortgagor-Cramer filed a Complaint, with Summons issued (without a lawyer) in the Wayne County Circuit Court, No. 115-792, and obtained an - "Order to Show Cause with Temporary Restraining Order" against the foreclosure. The defendants-Metropolitan Federal Savings and Loan were served with said Complaint, Summons and Order to Show Cause on August 12,

1968, by the Wayne County Sheriff's department. Contrary to the erroneous matters submitted in Mr. Samuel J. Behringer's brief for the Federal Home Loan Bank Board, the action designated as Civil Action No. 115792 was styled:

(Wayne CA
Virginia Cramer, Plaintiff # 115.792)
VS
METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, A United States corporation, JAMES I. McCLINTOCK Chairman, Board of Directors, ROGER C. RICHARDS President, JOHN C. DENYER Assistant Vice-President, JOHN DOE Members of the Board of Directors, RICHARD ROE Vice-President and All Other Officers of Metropolitan Federal Savings and Loan Association, Defendants

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When the parties, plaintiff and defendants, appeared for the scheduled hearing on August 16, 1968, on said "Order to Show Cause" before Wayne County Circuit Court Judge Thomas J. Murphy, the court would not allow Plaintiff-Cramer to proceed without a lawyer and yelled at her to "hire a lawyer", and the court set a continuance hearing date for August 23, 1968. On/or about August 20, 1968, Plaintiff-Cramer hired attorney-Abel Selburn who failed and neglected to file any pleadings in said case, appeared in court proceedings only once, on September 6, 1968, and where the court would not allow Plaintiff-Cramer to show her figures as to her mortgage loan and payments. The court allowed and heard only the perjured testimony of John C. Denyer and colloquy of two (2) lawyers; whereupon, the court said "go ahead with the foreclosure." On September 27, 1968, the court entered an "Order Dissolving Temporary Restraining Order" (not a judgment) which reads, in part, "and the Court having determined that Plaintiff is in default on

her mortgage" and "the Defendants are hereby permitted to proceed with their foreclosure action." No exhibits and no identifications were presented by the defendants; none were entered into the court record. Ever since then, the defendants-mortgagee's attorneys have continuously claimed that the entire matter was 'res judicata.'

A Sheriff's sale of Cramer's property was held on October 1, 1968.

In the interim, many and various other lending institutions refused to take Virginia Cramer's application for a re-mortgage to redeem on the foreclosure, for the reason that said other lending institution's policy is "not to pick-up on another's foreclosure." Also, in the interim, mortgagor-Cramer sold other property she owned, at a loss on a quick-sale, while attempting to raise enough cash-money to pay attorney fees and to redeem on the foreclosure. Subsequently, on June 5, 1969, Plaintiff-Cramer did redeem on the foreclosure by eventually having been approved by another lending institution for a re-mortgage at a higher interest rate. Further, in the interim, after attorney Abel Selburn had received $6,000.00 from Plaintiff-Cramer, she discovered in about March 1970 that the said attorney never had filed any pleadings in the case on her behalf, and that the Defendants-Metropolitan had never been served with Selburn's pleadings although attorney-Selburn had furnished copies of pleadings to Cramer claiming that they were filed in the court. Cramer fired attorney Abel Selburn and filed a grievance against him with the bar association and who helped Cramer get her money back from attorney-Abel Selburn.

In March, 1970, Plaintiff-Cramer again attempted to be heard on the case by filing

an Amended Complaint, but, again the successor Judge (where Judge Murphy was now deceased) would not allow Cramer to proceed without a lawyer. Cramer then hired, in April or May 1970, the second attorney, Allen Counard. (Contrary to Mr. Samuel Behringer's erroneous statement in his brief, there were no "cross motions" for summary judgment.) The court would not permit the Amended Complaint to be filed, and the court heard and granted a Summary Judgment on May 29, 1970, to Defendants-Metropolitan based on the "Order Dissolving Temporary Restraining Order" entered by Judge Murphy on September 27, 1968, as a finding of "default" in plaintiff's mortgage and where the defendants' attorneys claimed that the matter was "res judicata."

Contrary to Mr. Behringer's brief, the first appeal was lodged with the Michigan Court of Appeals on June 2, 1970, by attorney-Allen Counard who ignored the "Order Dissolving Temporary Restraining Order" entered on September 27, 1968, as a "finding of default in the mortgage," and which the defendants' attorneys were claiming as "res judicata." The Michigan Court of Appeals rendered an opinion on July 22, 1971, reversing and remanding the matter; that it was not res judicata and that "Mrs. Cramer's evidence was not heard." (emphasis added) Reported at 34 Mich App 638 (1971), and which said opinion allowed the filing of the Second Amended Complaint. The Second Amended Complaint as prepared by attorney Allen Counard, on behalf of Plaintiff-Cramer, consisted of six (6) counts, as follows:

(Filed July 23, 1971) Wayne, No. 115-792

Count I - Breach of Contract
Count II - Abuse of Process
Count III - Libel and Slander

Count IV - Breach of Fiduciary Relationship
Count V - Invasion of Privacy
Count VI - Intentional Infliction of Emotional Distress

A third Wayne County Circuit Court Judge entered his "Summary" of Pre-trial Statement as "This is a suit to set aside a foreclosure," in about October 1971. Prior to that, in August 1971, an Order was entered striking defendants affirmative defenses as to their claims of "res judicata" and "adjudged in default in the terms of her mortgage," by the Order entered on September 27, 1968. Subsequently, discovery proceedings were had by both parties' attorneys, and following that, in February 1972, plaintiff-Cramer's attorney-Allen Counard motioned for Summary Judgment (there were no "cross-motions") and which was granted to the Defendants on the grounds that "except as to the amount of damages there is no genuine issue of material fact and the Defendants are entitled to judgment as a matter of law", on March 27, 1972.

Subsequently, Cramer dismissed attorney-Allen Counard and she initiated her second appeal herself in the Michigan Court of Appeals, where said court rendered an opinion (unpublished) on May 29, 1973, Docket No. 14149, affirming dismissal of five (5) of the alleged causes of action against defendants and reversing and remanding as to Count IV, breach of fiduciary duty.

Again, during the jury trial, the lower court would not permit Cramer to be heard on any matters relating to the foreclosure because, presumably, of the so-called "finding of default" by the Order entered on September 27, 1968. From a Judgment of "no cause of action" entered on September 21, 1973, Cramer lodged the third appeal

in the Michigan Court of Appeals, Docket - No. 18948, resulting in another unpublished opinion dated June 2, 1975. On June 21, 1975, Cramer, in pro per, filed her Application for Leave to Appeal in the Michigan Supreme Court, where leave was granted, and which resulted in Michigan Supreme Court decision No. 57215, dated October 6, 1977, reported at 401 Mich 252. Two (2) rehearings were denied. Filing timely, Cramer in pro per then sought certiorari in the United States Supreme Court, on April 27, 1978. The United States Supreme Court denied her Petition on June 12, 1978. The United States Supreme Court denied her Petition on June 12, 1978 (fore the reason that fraud is alleged).

WAYNE COUNTY CIRCUIT COURT - ~~Civil~~ Action No. 78-822-879 CZ

On July 14, 1978, Cramer initiated the second action, styled as:

Virginia Cramer, Plaintiff
VS
METROPOLITAN SAVINGS ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, severally and individually, Defendants

and
McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, attorneys at law, jointly, severally & Individually,
Co-Defendants

and
ALLEN COUNARD, attorney at law,
Co-Defendant (as amended)

On two (2) different Orders entered by two (2) different Wayne Circuit Court judges,

Cramer filed her Claim of Appeal in the Michigan Court of Appeals, in September-1978, Docket No. 78-3794, which was dismissed on the court's own motion. Upon timely filing in the Michigan Supreme Court, that court denied Cramer leave to appeal on February 7, 1979. On motions for rehearing and reconsideration, and - motion to reverse, void or correct defective decision of October 6, 1977, reported at 401 Mich 252, the Michigan Supreme Court denied same on May 3, 1979. In the interim, on/or about February 26, 1979, Cramer hired the third attorney, William R. McFadden, who filed motions on her behalf in the Michigan Supreme Court, and further, filed a motion on his own behalf to withdraw as counsel, subsequently.

In the interim while said motions were pending in the Michigan Supreme Court, Cramer proceeding in pro per, on July 17, 1979, filed her Petition for Removal of the State case, ex parte, pursuant to Rule 81 (c), FRCP, and together with all copies of the State case proceedings, in the United States District Court, styled as follows:

Virginia Cramer, Petitioner-Defendant (in wrongful foreclosure action)

Petitioner-Plaintiff

(Removed State case No. 62249)

CA # 79-72789
U.S. Dist. Ct.

VS

METROPOLITAN SAVINGS AND LOAN ASSOCIATION a/k/a METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, severally and individually, Plaintiffs in wrongful foreclosure action,

Defendants

and

McCLINTOCK DONOVAN CARSON & ROACH
and JAMES I. McCLINTOCK, MICHAEL
DOELLE and WILLIAM P. THORPE,
attorneys at law, jointly, severally
& individually,

Co-Defendants

and

ALLEN COUNARD, attorney at law

Co-Defendant (as amended)

The "removal" pleadings consisted of the following:

Notice of Removal of State Case to the United States Court
Petition for Removal of Cause to the United States District Court for the Eastern District of Michigan (Southern Division-Detroit)
Notice of Hearing, Bond filed (cash) still in said U.S. District Court.
Motion for Waiver of Bond on Removal of State case
Brief in Support of Waiver of Bond on Removal of State case

FEDERAL DISTRICT COURT PROCEEDINGS--
No. 79-72789

Simultaneously, Cramer filed a new non-identical Complaint, pursuant to Rule 3, FRCP, styled as follows:

(In the U.S. District Court)

Virginia Cramer, — —
Petitioner-Plaintiff 79-72789

VS

METROPOLITAN SAVINGS ASSOCIATION
a/k/a METROPOLITAN FEDERAL SAVINGS
AND LOAN ASSOCIATION, JAMES I.
McCLINTOCK, ROGER C. RICHARDS and
JOHN C. DENYER, jointly, severally
and individually,

Defendants

and

and
McCLINTOCK DONOVAN CARSON & ROACH
and JAMES I. MCCLINTOCK, MICHAEL
DOELLE and WILLIAM P. THORPE,
Attorneys at law, jointly, severally
& individually,
Co-Defendants

and
ABEL SELBURN, ALLEN COUNARD and
WILLIAM R. McFADDEN, Attorneys at
law, jointly, severally and individually,
Co-Defendants

and
FEDERAL HOME LOAN BANK BOARD, Director
and/or Official and/or Officer in Charge,
Co-Defendants

and
MICHIGAN SUPREME COURT Members, Justices
Mary S. Coleman, Thomas Giles Kavanagh,
Charles L. Levin, John W. Fitzgerald,
James L. Ryan, Blair Moody, Jr., jointly,
severally and individually,
Co-Defendants

The initial pleadings of the new non-identical Complaint, filed pursuant to Rule 3, FRCP, in the United States District Court, consisted as follows:

Complaint for Declaratory Judgment
(Preamble and Several Counts)
Reversal of Michigan Supreme Court
decision,
Motion for Preliminary, Permanent and
Eternal Injunctive Relief & Brief
Notice of Hearing
Demand for Jury Trial - Money Damages for
Injuries to Person & Property

Petitioner-Plaintiff Virginia Cramer sought injunctive relief to restrain and enjoin the members of the Michigan Supreme Court from condoning fraud, among other things.

Petitioner-Plaintif's Complaint for

Declaratory Judgment, Reversal of Michigan Supreme Court Decision, Injunctive Relief, and Money Damages for Injuries to Person and Property, and Demand for Jury Trial, consists of the following captions:

Preamble - paragraphs 1 through 68, pages 1 through 19

1. Jurisdiction and Venue - paragraphs 1.1 through 1.10, pages 1 thru 5

2. Cause of Action and Federal Intervention paragraphs 2.1 through 2.7, pages 5 & 6

3. Wrongful foreclosure, Slander of Title, paragraphs 3.1 through 3.11, pages 6 thru 8

4. Actual Controversy - State Action Involved, paragraphs 4.1 through 4.8, pages 8 thru 10

5. Willful and Malicious Tort, paragraphs 5.1 through 5.4, pages 10 and 11

6. Fraud, Concealment and Deception - Attorney Malpractice (Selburn & Counard) paragraphs 6.1 through 6.28, pages 11 thru 18

7. Fraud, Concealment and Deception - Attorney Malpractice, McClintock Donovan Carson & Roach, Michael Doelle and William P. Thorpe, paragraphs 7.1 thru 7.36, Pages 18 thru 25

8. Conspirators - Obstructionists of Justice (Selburn, Counard and McFadden) paragraphs 8.1 thru 8.15, pages 25 thru 27

9. Actual Controversy - Federal Action Involved, Federal Home Loan Bank Board, paragraphs 9.1 through 9.25, pages 27 thru 31

10. Injunctive Relief against Michigan Supreme Court Justices, paragraphs 10.1 through 10.23, pages 31 thru 35

11. Measure of Damages, paragraphs 11.1 and 11.2, page 35

12. Prayer for Relief and Demand for Trial by Jury, paragraphs 12.1 thru 12.7, page 35

With Summons issued and copies of the above-captioned pleadings,—all of the main multiple defendants and co-defendants were personally served by the United States Marshal, including the Federal Home Loan Bank Board and with process of service, by the United States Marshal, upon the United States Attorney. Further, the Michigan State Governor and the Michigan State Attorney General were notified and furnished with copies of all pleadings mailed by Certified Mail, Return Receipt Requested. (Proofs of Service filed in original U. S. District Court record) The United States Marshal's returns of service, and the said return-receipts are filed in U. S. District Court case No. 79-72789. (See Rule 4, FRCP)

The Federal Home Loan Bank Board never answered to the Complaint. (See, Complaint, Count 9, Actual Controversy - Federal Action Involved, Federal Home Loan Bank Board, paragraphs 9.1 through 9.25, pages 27 thru 31.) Instead of answering to said Complaint, the U. S. Attorney's office, on behalf of the Federal Home Loan Bank Board, filed:

Motion to Dismiss Post-Removal Additional Defendants and Complaints and Remand Original Proceeding.

(Contrary to Mr. Samuel J. Behringer's erroneous statements regarding two complaints, Petitioner-Cramer filed one Complaint in two

sections, pursuant to Rule 3, FRCP, together with and simultaneously with her ex parte "Removal of State Case" pursuant to Rule 81 (c), FRCP.)

Pertaining to matters relevant to the Federal Home Loan Bank Board, the following pleadings were also subsequently filed, U.S.D.C. No. 79-72789:

Objections to Motion to Dismiss Post-Removal Additional Defendants and Complaints and
Objections to Motion to Remand Original Proceeding
Motion to consolidate removed action No. 62249 and Prior action No. 57215-(state case) with instant action No. 79-72789, Brief, Affidavit and Notice of Hearing
Plaintiff's Motion to void, nullify, or vacate Wayne County Circuit Court Order dated September 27, 1968, with Brief, Affidavit and Notice of Hearing
(by the court) Request for response to deft's motion to dismiss, or to remand, or judgment on the pleadings by 12-21-79 and notice of hearing set for 1-17-80 - Taylor, J.
Plaintiff's Supplemental Pleadings in opposition to Motion to Dismiss, or remand, or judgment on the pleadings; Motion and Notice of Motion for Three Judge Court; with Application for three-Judge Court and application for interlocutory preliminary injunction and temporary restraining order by single Judge pending hearing by a Three Judge Court; Brief.
Federal Deft's Combined Response to Plaintiff's Motions
Plaintiff's Opposition to Federal Deft's Combined Response to Plaintiff's Motions

In the interim, there were several motions

still pending in the Michigan Supreme Court, No. 62249, and said motions were not disposed of by the said Michigan Supreme Court until by their Order entered on April 3, 1980. (copy of which has been furnished to the United States Court of Appeals)

Thus, jurisdiction of the State case was in the Michigan Supreme Court at the time of "removal" of said State case. (Wayne) 78-822-879 CZ and Mich S.C. No. 62249.

On January 17, 1980, (prior to the disposition of pending motions in the Michigan Supreme Court, and from which said State case was "removed") the United States District Court entered an "Order of Dismissal in Part and Order of Remand in Part", the Honorable Anna Diggs Taylor, Judge, CA No. 79-72789, which reads as follows:

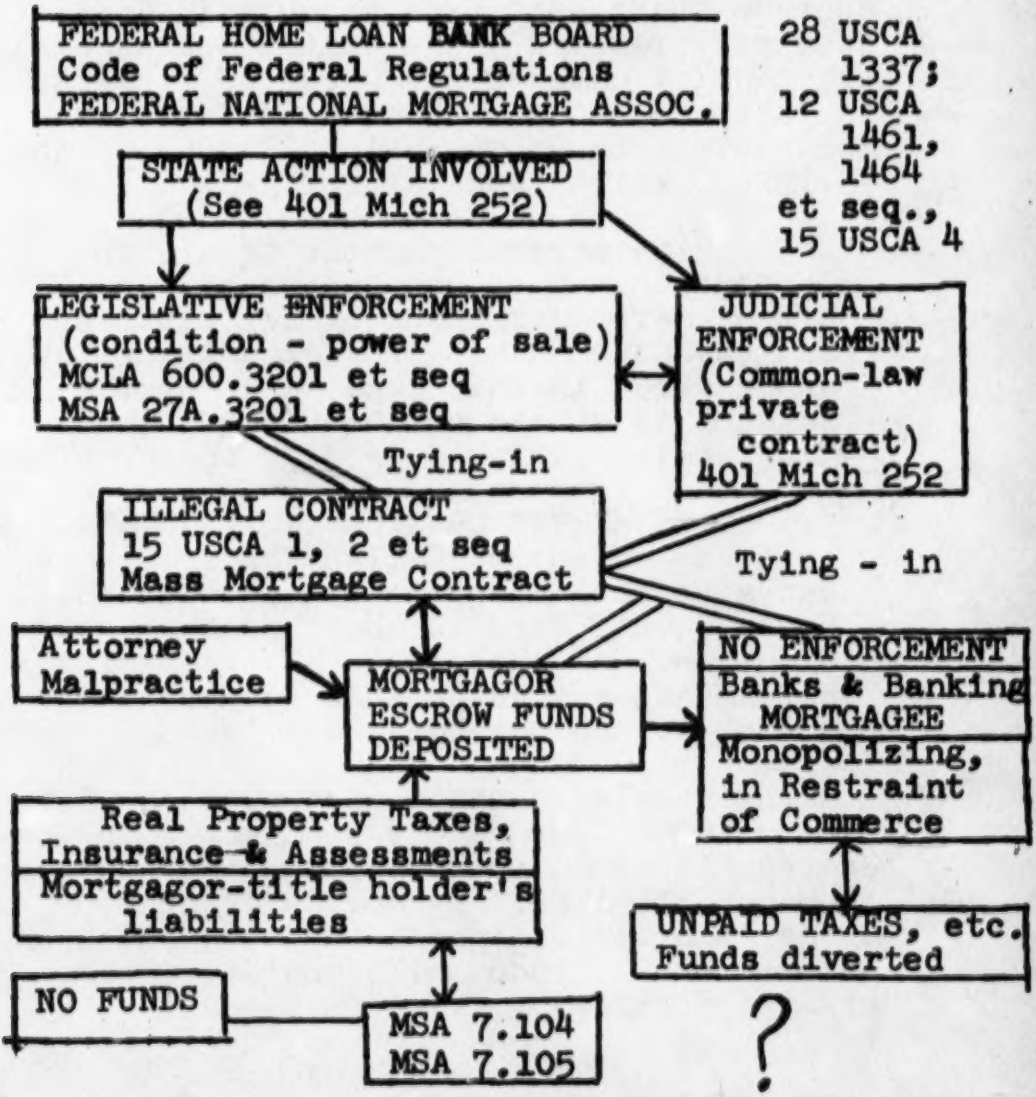
> "On the several motions of all the defendants and co-defendants herein, after hearing argument of all parties, and the Court having reviewed the files and records in this case, and for the reasons as stated on the record, the Court being fully advised in the premises,
>
> "IT IS HEREBY ORDERED AND ADJUDGED that as to co-defendant, Allen Counard, this cause be and hereby is remanded to the Wayne County Circuit Court of the State of Michigan, and that as to all remaining defendants and co-defendants herein this action be and hereby is dismissed."

Cramer filed "Notice of Appeal" on February 8, 1980. The case was docketed in the United States Court of Appeals, No. 80-1118, on March 11, 1980. By motion granted, Cramer's Brief on Appeal is to be filed on/or before May 20, 1980. (Extension of time granted for filing Brief on Appeal)

The following law and argument is presented in response to the Federal Home Loan Bank Board's motion to dismiss relative to jurisdiction of the Court.

SUBJECT MATTER - FEDERAL JURISDICTION

State action is involved (42 USCA 1983, 1985 et seq.) and the Michigan Supreme Court decision of October 6, 1977, reported at 401 Mich 252, Cramer vs Metropolitan Federal Savings & Loan, borders on insanity, as follows:



The decision rendered in Cramer vs Metropolitan, et al, (1977) enforces the precise conduct made unlawful by the Anti-trust laws by Act of Congress. The Federal courts have original and/or exclusive jurisdiction of the subject matter. The above chart shows the organized conspiracy against mortgagors and in violation of the laws.

The Federal Home Loan Bank Board was created by Act of Congress to provide supervisory and investigatory authority, and is a part of a "wholly owned Government corporation." Congress has effected several re-organizations involving the Federal Home Loan Bank Board. Prior to October 16, 1966, Section 1464(d)(1) of Title 12, USC., provided that:

> "(T)he Board whall have the power to sue and be sued, complain and defend in any court of competent jurisdiction in the United States." (emphasis added)

That provision did not change, and by further amendment by Act of Congress, May 25, 1967, Pub. L. 90-19, 81 Stat 29, functions of the Federal Home Loan Bank Board remained basically the same, and which said amendment provides that:

> "Any function or authority vested in or exercisable by the Federal Home Loan Bank Board, the Chairman thereof, or the Federal Savings and Loan Insurance Corporation immediately before the enactment of this Act shall not by this section or anything therein be affected or impaired, or subjected to any restriction or limitation to which it was not then subject." (dated May 25, 1967) 12 USCA 1437 (a).

Further, see 12 USCA 1451, 1452, et seq.,

which provides that:

(a) There is created the Federal Home Loan Mortgage Corporation, which shall be a body corporate and shall be under the direction of of Board of Directors composed of the members of the Federal Home Loan Bank Board, * * * . (emphasis added)

(b) The Corporation shall have power * * * (7) to sue and be sued, complain and defend, in any State, Federal, or other court; (emphasis added)

15 USCA 5. "Bringing in additional parties" provides as follows:

"Whenever it shall appear to the court before which any proceeding under section 4 of this title may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; * * * ."

15 USCA 4. "Jurisdiction of courts; duty of United States attorneys; procedure" provides as follows:

"The several district courts of the United States are invested with jurisdiction to prevent and restrain violations of sections 1 to 7 of this title; and it shall be the duty of the several United States attorneys, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * * the court may at any time make such temporary

restraining order or prohibition as shall be deemed just in the premises."

In the instant action, Plaintiff-appellant asserts that the federal courts have jurisdiction and authority to issue orders prohibiting the Federal Home Loan Bank Board from refusing to issue cease-and-desist orders against the 5,000 or more banks and banking institutions, nationally; and at least, in the State of Michigan, where most of the said banking institutions claim that they are "bound by federal regulations to require "escrow" on all home mortgages granted. The federal regulations are made and/or promulgated under the direction of the Federal Home Loan Bank Board and, specifically, do not contain any escrow requirement as to insured or guaranteed loans.

Further, the Federal courts have held that matters dealing with diversion of funds from bank to other parties are within the scope of investigatory authority of the Federal Home Loan Bank Board. U. S. v Marchisio, C.A.N.Y. 1965, 344 F2d 653. 12 USCA 1437 (a). Further authority is granted by Act of Congress as to the functions of the Federal Home Loan Bank Board under 12 USCA-1461, 1464, et seq., to issue "cease-and-desist orders" and shall remain effective and enforceable "whenever any director or officer of an association has committed any violation of law, rule, or regulation * * * or has engaged or participated in any unsafe or unsound practice in connection with the association * * * " and further, "The Board may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the association is located, for the enforcement of any effective and out-

standing notice or order issued by the Board under subsection (d) (12 USCA 1464-(d)), and such courts shall have jurisdiction and power to order and require compliance therewith; * * * ."

In the instant action, Plaintiff-appellant charges that the Federal Home Loan Bank Board encourages the wide-spread use of illegal contracts. As public officials and with private individuals in banks and lending institutions, the Federal Home Loan Bank Board is in joint participation of violations of 15 USCA 1 and 2, et seq.

No federal statute provides any limitation period to actions under the Federal Civil Rights Act. If a State statute must be relied upon as to the action against the Federal Home Loan Bank Board, plaintiff-appellant relies on:

MCLA 600.5855; MSA 27A.5855 "Fraudulent concealment of claim or identity of person liable, discovery" which provides as follows:

> "If a person who is or may be liable for any claim fraudulently conceals the existence of the claim or the identity of any person who is liable for the claim, from the knowledge of the person entitled to sue on the claim, the action may be commenced at any time within 2 years after the person who is entitled to bring the action discovers, or should have discovered, the existence of the claim although the action would otherwise be barred by the period of limitations."

See Exhibit A, dated March 31, 1978, attached hereto, which is a letter from the Federal Home Loan Bank Board, Washington, D.C., and which, in itself, almost required an Act of Congress (through Senator Riegle),

see Exhibits B and C attached hereto, to obtain this writing from the Federal Home Loan Bank Board, and which states, in part,

> " * * * Board regulations do not contain any escrow requirement as to insured or guaranteed loans, * * * "

The various and numerous bank and banking institutions (including Metropolitan Federal Savings and Loan Association a/k/a Metropolitan Savings and Loan Association, defendants herein, who foreclosed on "escrow" funds only and accelerated the principal indebtedness) claim that payment of "escrow" funds on mortgages is mandatory, pursuant to federal regulations. The Michigan Supreme Court decision of October 6, 1977, Cramer vs Metropolitan, et al, 401 Mich 252, enforces the precise conduct made unlawful by the Antitrust laws by Act of Congress. In Janich Bros., Inc. v American Distilling Co., C.A. Cal. 1977, 570 F 2d 848, the federal court of appeals said,

> "To establish a prima facie case of attempted monopolization, a plaintiff must prove three elements:
>
> (1) specific intent to control * * * or destroy competition with respect to a part of commerce, (money)
>
> (2) predatory conduct directed to accomplishing the unlawful purpose, and
>
> (3) a dangerous probability of success."

"The phrase 'attempt to monopolize' means the employment of methods, means and practices which would, if successful, accomplish monopolization and which, though falling short, nevertheless approach so close as to create a dangerous probability of it. * * *

In determining whether there was an attempt to monopolize, all of the acts of the defendants should be viewed together." Knutson v Daily Review, Inc., C.A. Cal. 1976, 548 F 2d 795, cert den 97 S Ct 2977, 433 US 910, 53 L Ed 2d 1094.

(See chart herein, showing organized conspiracy against mortgagors and in violation of the laws.)

FEDERAL HOME LOAN BANK BOARD WITHOUT STANDING TO OBJECT TO REMOVAL OF STATE CASE

The Federal Home Loan Bank Board was never a party to the State case and, therefore, is and was without standing to object to "removal" of the State case to the Federal District Court.

—

Mortgagee-Metropolitan foreclosed by advertisement (MCLA 600.3201, et seq., MSA 27A.3201 et seq.) asserting, in effect, their federal claim or right as essential cause of action, to wit: foreclosure on mortgagor's property based upon "escrow" funds only. CFR 545.6-1 et seq. Mortgagor-Cramer has defensive merits of counterclaims against the mortgagee where mortgagee failed to pay mortgagor's taxes and insurance when due while collecting said "escrow" funds and involving a mass mortgage contract which, when read in its entirety, inhibits and prohibits a mortgagor from paying said liabilities of taxes and insurance which may become due on said mortgaged property. Mortgagee-Metropolitan further claim that they are bound to do "nothing" with said "escrow" funds belonging to the morgagors, pursuant to Title 12, sections 545.6-1 et seq.

Obviously, therefore, mortgagee's foreclosure action is founded on the laws of

the United States, to wit: federal regulations made or promulgated by the Federal Home Loan Bank Board, under 12 USCA 1461, 1464, et seq., and "removal" jurisdiction should be sustained where founded on the mortgagee's foreclosure by advertisement on "escrow" funds as cause of action. Further, mortgagor-Cramer has never had a day in court as to said foreclosure action initiated by the mortgagee. Further, due to the malpractice, negligence, fraud, concealment and deceit of the attorneys (on both sides) the document entered on September 27, 1968 by the Wayne Circuit Court (prior action 115-792 resulting in the Michigan Supreme Court decision No. 57215, dated October 6, 1977, reported at 401 Mich 252) as a "finding of default in her mortgage" consistently and continually denied mortgagor-Cramer due process of law and the opportunity to be heard in the - State case. No exhibits and no identifications were entered into the court record of the State case to support any "finding of default in her mortgage." In the almost 12 years this case has been pending in the courts, mortgagor-Cramer has never had a day in court to prove that there was no basis for the foreclosure initiated by the mortgagee, and that mortgagor-Cramer was not in default of said mortgage. Further, the court forced this mortgagor to hire attorneys, and said mortgagor-Cramer still never had a day in court as to the wrongful foreclosure and to prove that she was not in default of said mortgage.

The Federal Home Loan Bank Board is a - defendant (and properly so) in the original of case number 79-72789, United States District Court, and which said Complaint was filed on July 17, 1979, pursuant to FRCP, Rule 3. Defendant Federal Home Loan Bank Board is without standing to object to "removal" of the State case (Wayne

Circuit Court 78-822-879 CZ and Michigan Supreme Court No. 62249) since the Federal Home Loan Bank Board was never a party to the State case.

ADDING INDISPENSABLE PARTIES IN THE FEDERAL JURISDICTION PURSUANT TO RULE 3, FRCP, WAS PROPER

FILING OF ONE, NEW OR ORIGINAL COMPLAINT PURSUANT TO RULE 3, FRCP, WAS PROPER UPON FILING OF EX PARTE PETITION FOR REMOVAL OF STATE CASE PURSUANT TO RULE 81(c), FRCP.

The Federal District Courts have held that after "removal" of a State case to the federal court, technical defects in an action may be remedied. Where the Federal Home Loan Bank Board was not a party to the "removed" State case, the Federal Home Loan Bank Board cannot object to said "removal."

Adding indispensable parties to a compulsory counterclaim (or non-identical complaint) in the federal jurisdiction, pursuant to Rule 3, FRCP, was proper with the filing of ex parte petition for removal of State case, pursuant to Rule 81(c). City of New York v Evigo Corp., 20 FR Serv 927, 121 F Supp 748 (DCSDNY, 1954).

The state rules became inoperative when the litigation was removed to the district court; the Federal Rules became applicable and the requirement for filing a compulsory counterclaim became effective. TPO, Inc. v Federal Deposit Ins. Corp., 17 FR Serv 2d 631, 487 F 2d 131 (CA 3rd, 1973).

Petitioner-Cramer (Plaintiff-appellant herein) was not required to seek leave from the state courts, prior to removal of State case, to join or add new defendants. State courts have held themselves to be without jurisdiction to determine matters

involving federal antitrust laws. In Vaughn Co., Ltd. v Saul, 1977, 237 SE 2d 622, 143 GA App 74, the Georgia State appellate division held,

> "Jurisdiction to determine matters involving federal antitrust laws is vested exclusively in the federal courts and issues arising under those laws, whether raised by way of attack or defense, are beyond the jurisdiction of state courts."

After a civil action has been removed from a state court to a federal court (FRCP, Rule 81(c)), it is governed by the Federal Rules of Civil Procedure, which includes Rule 3 and 4, among others. People of State of Illinois ex rel Bowman v Home Federal Savings & Loan Ass'n., 20 FR Serv 2d 946, 621 F 2d 704 (CA 7th, 1975).

Petitioner-Cramer (Plaintiff-appellant herein) filed one new, original complaint in two sections. She did not file two complaints. This has been repeatedly explained to Mr. Samuel J. Behringer, Jr., and that "Cramer" did not have a heavy-duty stapler to fasten all the pleadings together, and that she did staple the papers together in two sections.

Regardless of how the papers were stapled together, the Federal Home Loan Bank Board did not answer to any part of the said Complaint. Process of service was made by the United States Marshal. The Federal Home Loan Bank Board, by its attorneys, only motioned the court to "dismiss and reman". Defense of failure to join indispensable parties was not properly brought before the court via motion to dismiss. Wegwart v Eagle Movers, Inc., D.C. Wis. 1977, 441 F Supp 872.

In the instant case, the Federal district court dismissed the action. For purposes of appeal, there is a difference between dismissal of complaint and dismissal of the action. Martinez v Flores, C.A. 9, 1962, 299 F 2d 888. On appeal from grant of motion to dismiss where defendant (Federal Home Loan Bank Board) filed no answer, the truth of allegations of the complaint (any complaint, i.e., one or two or compulsory counterclaim, or amended complaint) are to be assumed. Small v U.S., C.A. Del. 1964, 533 F 2d 702.

For purposes of motion to dismiss, material allegations of complaint are taken as admitted and complaint is to be liberally construed in favor of plaintiff. (Per Mr. Justice Marshall with the Chief Justice and one Justice concurring and two Justices concurring in the result). Jenkins v McKeithen, La 1969, 89 S Ct 1843, 395 U.S. 411, 23 L Ed 2d 404, rehearing denied 90 S Ct 35, 396 U.S. 809, 24 L Ed 123. The federal courts have consistently liberally contrued pro se complaints. Johnson v Marton, D.C.N.Y. 1972, 55 F.R.D. 282. Courts are cautious in dealing with motions to dismiss particularly where to grant the motion would terminate the litigation before the parties have had their day in court. Vogelstein v National Screen Service Corp., D.C. Pa. 1962, 204 F Supp 591, affirmed 310 F 2d 738, Cert den 83 S Ct 1894, 374 US 840, 10 L Ed 2d 1061, rehearing den 84 S Ct 34, 374 US 873, 11 L Ed 2d 103.

Where plaintiff is proceeding without benefit of counsel, plaintiff's allegations against the Federal Home Loan Bank Board should be viewed by the court without regard to technicalities. U.S. ex rel. Smith v Heil, D.C. Pa. 1970, 308 F Supp 1063.

In the instant case, Petitioner-Cramer's new Complaint was not the product of the petition for removal and motion to remand. Ballantine Books, Inc. v Capital Distributing Co., C.A. N.Y. 1962, 302 F 2d 17.

Petitioner-Cramer's one new Complaint (in two sections) is non-identical with the Complaint filed in the State court action. The Court of Appeals cannot affirm dismissal for failure to state calim on which relief can be granted, if under any reasonable reading complaint states claim under which relief can be granted, especially in private antitrust action which is imbued with public interest and is therefore favored. D'Ippolito v Cities Service Co., C.A.N.Y. 1967, 374 F 2d 627. It is appropriate for the court to consider matters outside of the pleadings. Pintozzi v Scott, C.A. Ill, 1970, 436 F2d 374.

> "Rule 3 provides that a civil action is commenced by filing a complaint with the court, and Rule 81(c) makes all the Rules applicable to all actions removed from state courts."
> Engelhardt v Bell & Howell Co., 5 FR Serv 2d 664, 299 F 2d 480

The United States Attorney, representing the Federal Home Loan Bank Board, has no authority to represent the Michigan Supreme Court members as defendants pertaining to the one, new, original complaint filed in the Federal District Court, No. 79-72789. (stapled in two section) Further, the members of the Michigan Supreme Court were not parties to the State court case, which Petitioner-Cramer "removed" ex parte pursuant to Rule 81 (c), FRCP.

The Michigan Supreme Court decision

rendered in Cramer vs Metropolitan, et al., dated October 6, 1977, reported at 401 Mich 252, is adjudicatory to the extent that it allows the enforcement of the precise conduct (by foreclosure) made unlawful by the Antitrust laws by Act of Congress. Further, the allegations that the Federal Home Loan Bank Board encourages the widespread use of illegal contracts, in violation of 15 USCA 1, 2, et seq., must be taken as true, where the Federal Home Loan Bank Board, by their attorneys, did not answer to the complaint. The courts have held that where an indispensable party to the action was not (technically) a party to a state court action is not an objection to removal. City of New York v Evigo Corp., 20 FR Serv 927, 121 F Supp 748 (DCSDNY, 1954).

PLAINTIFF HAS STANDING TO SUE THE FEDERAL HOME LOAN BANK BOARD

The Federal Home Loan Bank Board is the regulatory authority for the nation's federally insured savings and loans. The regulations include Code of Federal Regulations, Title 12, 545.6-1 et seq., "Loans - Real estate loans" part of which pertains to the requirement of so-called "escrow" funds, among other things. These regulations are "approved-by the Board" and where the mortgagee-banking and lending institutions, by volume, claim that they are required and/or "bound by federal regulations to require "escrow" on all home mortgages granted."

> "The question of whether a statute or administrative regulation permits maintenance of private cause of action turns on whether provision allegedly violated was designed to protect complainant from injuries of which it

complains and whether implication of such cause of action is in furtherance of provision's purpose." 12 USCA 1464, City Federal Savings and Loan Assn. v Crowley, DC Wis 1975, 393 F Supp 644. (emphasis added)

Mortgagee-Metropolitan (who foreclosed solely on the basis of their requirements for "escrow" funds) assert that they are bound to do nothing with the "escrow" funds so required. Plaintiff-appellant has standing to sue the Federal Home Loan Bank Board together with the mortgagee-Metropolitan where the said mortgagee relied on their claim and cause of action that they are required by federal regulations to require "escrow".

CONCLUSION

Petitioner-Cramer sought "removal" of the State case while it was pending in the Michigan Supreme Court (not in the Wayne County Circuit Court). Remand can be effected only to the State jurisdiction from which the State case was removed, or "from whence it came." The Wayne County Circuit Court is without jurisdiction as to said "remand," and the jurisdiction of the court must be protected in any event. The Federal Home Loan Bank Board was not a party to the State case and therefore, the "r emoval" sought cannot be objected to by the Federal Home Loan Bank Board. Petitioner-Cramer filed one, new, original complaint adding indispensable parties. The Federal Home Loan Bank Board, by their attorneys, have no authority to speak for and/or represent the Michigan Supreme Court members. Adding indispensable parties to a compulsory counterclaim (or non-identical complaint), pursuant to Rule 3, FRCP, was allowable without seeking leave of the court, and

technical defects in an action may be remedied on the court's own motion pursusna to 15 USCA 5 "Bringing in additional parties", 28 USCA 1337, especially where the federal courts have original and/or exclusive jurisdiction.

For the reasons shown and stated herein, and where the record establishes that the federal courts have original and/or exclusive jurisdiction, this Court of Appeals has jurisdiction to entertain this appeal. Accordingly, the mortion to dismiss by the Federal Home Loan Bank Board should be rejected by the court and the motion should be denied.

Respectfully submitted,
Dated: /s/ Virginia Cramer, Plaintiff-
May 2, 1980 Appellant, In Propria Persona

Filed May 6, 1980 No. 80-1118
United States Court of Appeals
Sixth Circuit

EXHIBIT A

Federal Home Loan Bank Board
Office of General Counsel
1700 G Street, N.W.
Washington, D.C. 20552
Federal Home Loan Bank System
Federal Home Loan Mortgage Corp
Federal Savings and Loan Ins. Corp

March 31, 1978

Ms. Virginia Cramer
27314 Clairview Drive
Dearborn Heights, Michigan 48127

Dear Ms. Cramer:

This is in further reference to Ms. Feldman's telephone call to you yesterday concerning your letter of March 2 to Senator

Riegle.

In your letter to Senator Riegle you asked for confirmation of the following conclusion:

> No "escrowing" or "escrow" is required on any insured or guaranteed loan, but "escrowing" is required on a loan not insured or not guaranteed, 90 percent of value.

While Board regulations do not contain any escrow requirement as to insured or guaranteed loans, the regulations of the insuring agency (FHA) or the guaranteeing agency (VA) must be examined to determine whether such a requirement exists. For your information, a copy of pertinent VA and FHA regulations is enclosed. Board regulations contain an escrow requirement, as you indicate, for loans in excess ov 80%, which of course includes the 90% loans you refer to above.

Please let us know whether we can be of further assistance.

Sincerely yours,
/s/ Jerome S. Plapinger
Associate General Counsel

Enclosure
cc: Senator Riegle (Att: Ms. Rosalie Walker)

Filed May 6, 1980 No. 80-1118
United States Court of Appeals
Sixth Circuit

EXHIBIT B

UNITED STATES SENATE
Committee on Banking, Housing, and Urban Affairs
Washington, D.C. 20510

552a

February 7, 1978

Ms. Virginia Cramer
27314 Clairview Dr.
Dearborn Heights, MI

Dear Ms. Cramer:

I am glad you took the time to contact my Detroit office regarding your questions about sections of Title XII of the Federal Code.

I contacted the Federal Home Loan Bank Board in your behalf and am enclosing a reply and some information they forwarded to me. If this information does not answer your questions satisfactorily, please do not hesitate to contact me again.

With warm regards,

Sincerely,
/s/ Don Riegle
Donald W. Riegle, Jr.
United States Senator

DWR/pw
enclosure

Filed May 6, 1980 No. 80-1118
United States Court of Appeals
Sixth Circuit

EXHIBIT C

Federal Home Loan Bank Board
1700 G Street, N.W.
Washington, D.C. 20552

Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corp

January 23, 1978

Honorable Donald Riegle
United States Senate
Washington, D. C. 20510

Dear Senator Riegle:

This is in response to an inquiry sent to the Federal Home Loan Bank Board on January 12 from your office. The inquiry was from Ms. Virginia Cramer and concerns the requirement that savings and loans escrow taxes.

The Federal Home Loan Bank Board is the regulatory agency for the nation's federally insured savings and loans. With regard to the escrow account requirements, the Bank Board's regulations affect only federally chartered savings and loans but not State-chartered federally insured institutions. The Board's regulations state that taxes must be collected by the savings and loan if the mortgage is in excess of eighty percent of the purchase price of the home: The monthly collection, which is done in conjunction with the mortgage, must approximate one-twelfth of the taxes. If the loan is for less than eighty percent, then the matter of escrowing taxes is subject to negotiation between lender and borrower.

The purpose of the regulation is to protect the savings and loan and the Federal Savings and Loan Insurance Corporation should borrowers default on their taxes. If taxes are not paid, the local government will have a first lien on the property and the lien will supercede the mortgage held by the savings and loan. Through monthly escrowing, the savings and loan can be assured that the taxes will be paid promptly and their mortgage will not be placed in jeopardy from

unpaid property taxes.

I trust this explanation is of assistance to Ms. Cramer, but should she have any further questions, please let me know.

Sincerely,
/s/ Trent R. Feldman
Assistant to the Board

Filed May 5, 1980 No. 80-1118
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

VIRGINIA CRAMER,
Plaintiff-appellant
v.
METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, ET AL.,
Defendants-Appellees

ORDER

BEFORE: WEICK, LIVELY and JONES, Circuit Judges

This cause came before the Court upon the motion of the plaintiff-appellant to stay pending appeal an order of the district court which dismissed in part and remanded in part a civil rights and attorney malpratice action removed from state court, and upon the motion of one of the defendant-appellees to dismiss the appeal from that part of the district court order remanding the claims against him to the State Court.

The Court has considered the motions and memoranda offered in support thereof, and has reviewed the record of the district court including relevant pleadings and decisions in earlier state court litigation, and concludes therefrom the appellant has

not shown entitlement to the requested stay; Reed v Rhodes, 549 F 2d 1046 (6th Cir. 1976). It is further concluded that the issues upon which the decision of the remainder of the cause depends are so unsubstantial as not to need further argument, and that the motion to dismiss is well taken. It is

Therefore ORDERED that the motion to stay be, and it hereby is, denied. It is further ORDERED that the appeal from that part of the judgment remanding the cause to the state court be, and it hereby is, dismissed; Rule 9(d)1, Rules of the Sixth Circuit. It is ORDERED that the balance of the judgment of the district court be, and it hereby is, affirmed; Rule 9(d)3, Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
/s/ John P. Hehman, Clerk

Office of the Clerk
United States Court of Appeals
for the Sixth Circuit
Cincinnati, Ohio 45202

May 5, 1980

Ms. Virginia Cramer
Mr. William P. Thorpe
Mr. Samuel Behringer
Mr. Abel J. Selburn
Mr. William R. McFadden
Mr. John P. Jacobs

re: Our Case No. 80-1118
Virginia Cramer, Plaintiff-Appellant, vs Metropolitan Savings Association et al., Defendant-Appellees
District Court Number 79-27289
(sic, Number 79-72789)

Dear Counsel:

Enclosed is a copy of an order which

was entered today in the above-styled case.

Very truly yours,

John P. Hehman, Clerk

By /s/ Barbara J. Burns
(Mrs.) Barbara J. Burns
Deputy Clerk

Enclosure

Office of the Clerk
United States Court of Appeals
for the Sixth Circuit
Cincinnati, Ohio 45202

May 9, 1980

Ms. Virginia Cramer
27314 Clairview
Dearborn Heights, Michigan 48127

Re: Case No. 80-1118 - Virginia Cramer, Plaintiff-Appellant, v. Metropolitan Savings Association, et al, Defendants-Appellees, District Court Number 79-72789

Dear Ms. Cramer:

I am returning, without filing, your documents, entitled, "Objections to Motion to Dismiss Appeal". Pursuant to Rule 27 (a), Federal Rules of Appellant (sic, Appellate) Procedure, any party may file a response to a motion within 7 days after service of motion. Our records indicate the motion of appellee Federal Home Loan Bank to dismiss was served April 24, 1980.

Very truly yours,
John P. Hehman, Clerk
/s/ Yvonne C. Henderson
(Mrs.) Yvonne C. Henderson
Deputy Clerk

FROM: VIRGINIA CRAMER
27314 Clairview
Dearborn Hts., Mich 48127

Telephone: (313) 278-7286

May 14, 1980

Mr. John P. Hehman, Clerk
Office of the Clerk,
United States Court of Appeals
for the Sixth Circuit
Post Office and Court Building
Cincinnati, Ohio 45202

Re: Case No. 80-1118
Virginia Cramer, Plaintiff, v.
Metropolitan Savings Association,
et al, Defendants-Appellees,
District Court Number 79-72789

Attention: Ms. Sara Altman, Case Manager
and Ms. Yvonne C. Henderson,
Deputy Clerk

Dear Ms. Altman and Ms. Henderson:

In accordance with telephone conversations with your office, I am re-returning herewith my documents entitled "Objections to Motion to Dismiss Appeal", which are dated as having been received in your office on May 6, 1980, for filing in the court record.

Your letter of May 9, 1980, is in error regarding Rule 27 (a), and with reference to "7 days", as follows:

Pursuant to Rule 26 (a) - Computation and Extension of Time, and subparagraph 26 (c) - Additional Time After Service by Main, my response was timely filed on May 6, 1980.

The following is the method which should have been used for computing the time in the event there may have been any question:

April 24, 1980, as the date of service of Federal Home Loan Bank Board's Motion to Dismiss (however, this date is unsupported by the "Certificate of Service" filed with said pleading.) This date is not included in the computation of time of 10 days, pursuant to Rule 26 (a).

April 25, 1980, date filed in U.S. Court of Appeals, and date received by V. Cramer, appellant. First day of computation.

April 26, 1980, (Saturday) Second day of computation.

April 27, 1980, (Sunday) Third day of computation.

April 28, 1980, (Monday) Fourth day of computation.

April 29, 1980, (Tuesday) Fifth day of computation.

April 30, 1980, (Wednesday) Sixth day of computation.

May 1, 1980, (Thursday) Seventh day of computation.

May 2, 1980, (Friday) Eighth day of computation.

May 3, 1980, (Saturday) Ninth day of computation.

May 4, 1980, (Sunday) excluded as last day of computation being Sunday

May 5, 1980, (Monday) Tenth day of computation, extending to end of said day pursuant to Rule 26 (a)

May 6, 1980, (Tuesday) Response was mailed on/or before May 4, 1980, which was received by opposition on May 5th.

Therefore, even if my documents had been mailed on May 5, 1980, and received on May 6,

1980, they were timely served within the allowable 10-day period.

Further, please allow me to draw your attention to your local court rule No. 8, which provides as follows:

"Rule 8 - Motions and Motion Practice

(a) Motion to Dismiss, Lack of Jurisdiction. At any time after a notice of appeal is filed a party may file a motion to dismiss on the ground that the appeal is not within the jurisdiction of the Court. The appellant shall have ten (10) days from the date of service of the motion to respond."

Further, your attention is directed to the "Certificate of Service" attached to the Federal Home Loan Bank Board's motion to dismiss. The said Certificate of Service bears no date whatsoever to support any contention as to date of mailing.

If you will please take the time to examine said "certificate of Service" carefully, you will find no specific date whatsoever. Therefore, there is no reason for your office to believe that said "motion to dismiss" was served on April 24, 1980, as per your letter of May 9, 1980. (photocopy attached)

As I informed Ms. Altman, by telephone, this matter will be taken on appeal to the United States Supreme Court. Therefore, I am sure you will want your docket entries to be absolutely correct and proper in consideration for all parties concerned.

I greatly appreciate your concern, if applicable, and your prompt attention and cooperation in this matter.

Also, enclosed is my check in the amount of

Fifty Cents (50/100 Dollars) for which I am requesting that you send me a certified copy of the one-page list of docket entries, Case No. 80-1118, in your court records.

Thank you very much.

Very truly yours,
/s/ Virginia Cramer
Plaintiff-appellant
in pro per

Attach.
Encl.
cc: Mr. George M. Weller
Mr. William P. Thorpe
Mr. Samuel Behringer
Mr. Abel J. Selburn
Mr. William R. McFadden
Mr. John P. Jacobs

P.S. I cannot resist making the following comparative inquiry: How does it happen that attorneys are not given equal treatment when they, in fact, have submitted pleadings to the court untimely and late by several days, and late by several weeks? Need I say more?

TO THE CHIEF JUSTICE AND ALL OTHER JUSTICES OF THE UNITED STATES SUPREME COURT:

Your Petitioner, Virginia Cramer, is not an attorney, and never will be an attorney, and does not want to be an attorney.

Respectfully submitted,

Virginia Cramer

Virginia Cramer, Petitioner
In Propria Persona

No. 80-250

Supreme Court, U.S.
FILED
AUG 25 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

October Term, 1980

VIRGINIA CRAMER, PETITIONER-DEFENDANT IN WRONGFUL FORECLOSURE ACTION,
Petitioner,

vs.

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARD and JOHN C. DENYER, Jointly, Severally and Individually, PLAINTIFFS IN WRONGFUL FORECLOSURE ACTION; McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, ATTORNEYS AT LAW, Jointly, Severally, and Individually; ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, ATTORNEYS AT LAW, Jointly, Severally and Individually; FEDERAL HOME LOAN BANK BOARD, DIRECTOR AND/OR OFFICIAL AND/OR OFFICER IN CHARGE; MICHIGAN SUPREME COURT MEMBERS, JUSTICES MARY S. COLEMAN, THOMAS GILES KAVANAGH, CHARLES L. LEVIN, JOHN W. FITZGERALD, JAMES L. RYAN, BLAIR MOODY, JR., and G. MENNEN WILLIAMS, Jointly, Severally and Individually,
Respondents.

MEMORANDUM OPPOSING CERTIORARI

PLUNKETT, COONEY, RUTT, WATTERS, STANCZYK & PEDERSEN
JOHN P. JACOBS
Counsel of Record
1000 Guardian Building
Detroit, Michigan 48226
(313) 965-3900
Attorney for Respondent Allen Counard

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

No. .....

In the Supreme Court of the United States

October Term, 1980

VIRGINIA CRAMER, PETITIONER-DEFENDANT IN WRONGFUL FORECLOSURE ACTION,
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vs.

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Respondents.

MEMORANDUM OPPOSING CERTIORARI

Insofar as Respondent Counard is concerned, this is a legal malpractice action which Petitioner had filed, first in state court, and later in federal court. Petitioner designated the within federal action as a "removed" action, although she was not a defendant (13a). No federal civil rights allegations against Counard were ever raised (61a-65a). Respondent Counard moved to remand the case to be joined and consolidated with the identical state court actions, which had been previously filed against him, in the Circuit Court for the County of Wayne (sitting in Detroit, Michigan), and in the Michigan Supreme Court (203a). After argument, the United States District Court for the Eastern District of Michigan granted this Motion for several, well-articulated reasons (452a-453a). An appropriate Order of Remand was entered (454a).

Petitioner filed a Notice of Appeal (455a). Respondent Counard filed a Motion to Dismiss this appeal (463a-465a). On May 5, 1980, the United States Court of Appeals for the Sixth Circuit dismissed the appeal as to Counard insofar as the appeal of the Order of Remand was concerned (554a).

Inasmuch as Petitioner filed the within federal action as a "removed" action, to the extent that such action below was so filed by her, 28 USC §1447(d) would seem to bar any appellate review as to the Order of Remand. If Petitioner's action was incorrectly denominated by her as a "removal", as seems now to be her theory, the substance of the trial court ruling was nevertheless patently correct since Petitioner and Defendant Counard, both Michigan citizens, were not diverse pursuant to 28 USC §1332 and dismissal for a lack of jurisdiction was also in order since Petitioner claimed no federal action aginst Counard.

Finally, the mortgage foreclosure which Petitioner contends Respondent Counard allegedly mishandled was sustained by the Michigan Supreme Court, and this Court subsequently refused to review the matter. *Cramer v Metropolitan Savings & Loan Ass'n*, 401 Mich 252, 258 NW2d 20, *reh den* 402 Mich 954, 960 (1977), *cert den* 436 US 958, 98 S.Ct. 3072, 57 L.Ed.2d 1123.

Certiorari should be denied.

PLUNKETT, COONEY, RUTT, WATTERS, STANCZYK & PEDERSEN
By: JOHN P. JACOBS
1000 Guardian Building
Detroit, Michigan 48226
(313) 965-3900
Attorney for Respondent Allen Counard

DATED:

Supreme Court, U. S.
FILED
AUG 29 1980
MICHAEL RODAK, JR., CLERK

No. 80-250

IN THE

Supreme Court of the United States

October Term, 1980

VIRGINIA CRAMER, PETITIONER-DEFENDANT IN WRONGFUL FORECLOSURE ACTION,
Petitioner,

vs.

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, Severally and Individually, PLAINTIFFS IN WRONGFUL FORECLOSURE ACTION; McCLINTOCK DONOVAN CARSON & ROACH and JAMES McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, ATTORNEYS AT LAW, Jointly, Severally, and Individually; ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, ATTORNEYS AT LAW, Jointly, Severally and Individually; FEDERAL HOME LOAN BANK BOARD, DIRECTOR AND/OR OFFICIAL AND/OR OFFICER IN CHARGE; MICHIGAN SUPREME COURT MEMBERS, JUSTICES MARY S. COLEMAN, THOMAS GILES KAVANAGH, CHARLES L. LEVIN, JOHN W. FITZGERALD, JAMES L. RYAN, BLAIR MOODY, JR., and G. MENNEN WILLIAMS, Jointly, Severally and Individually,
Respondents.

MEMORANDUM OPPOSING CERTIORARI

McCLINTOCK DONOVAN CARSON & ROACH
By: WILLIAM P. THORPE
2150 Guardian Building
Detroit, Michigan 48226
(313) 963-3400

Attorney for Respondents

Interstate Brief & Record Co., Wurlitzer Bldg., 1509 Broadway, Detroit, MI 48226
962-8745 962-8746

No. 80-250

IN THE

Supreme Court of the United States

October Term, 1980

VIRGINIA CRAMER, PETITIONER-DEFENDANT IN WRONGFUL FORECLOSURE ACTION,
Petitioner,

vs.

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOCIATION, JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, Severally and Individually, PLAINTIFFS IN WRONGFUL FORECLOSURE ACTION; McCLINTOCK DONOVAN CARSON & ROACH and JAMES McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, ATTORNEYS AT LAW, Jointly, Severally, and Individually; ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, ATTORNEYS AT LAW, Jointly, Severally and Individually; FEDERAL HOME LOAN BANK BOARD, DIRECTOR AND/OR OFFICIAL AND/OR OFFICER IN CHARGE; MICHIGAN SUPREME COURT MEMBERS, JUSTICES MARY S. COLEMAN, THOMAS GILES KAVANAGH, CHARLES L. LEVIN, JOHN W. FITZGERALD, JAMES L. RYAN, BLAIR MOODY, JR., and G. MENNEN WILLIAMS, Jointly, Severally and Individually,
Respondents.

MEMORANDUM OPPOSING CERTIORARI

MEMORANDUM OPPOSING CERTIORARI

As to the respondents Metropolitan Savings and Loan Association a/k/a Metropolitan Savings Association, James I. McClintock, Roger C. Richards, and John C. Denyer, jointly and severally and individually, McClintock Donovan Carson & Roach, James I. McClintock, Michael Doelle, William P. Thorpe, attorneys at law, jointly, severally, and individually this matter is res judicata.

As the Petitioner, Virginia Cramer, sets forth in great detail in her petition the exact same questions have been under litigation since she initially filed suit on August 12, 1968. The case proceeded through the various Michigan Courts and respondents position was sustained by the Michigan Supreme Court and this Court by refusal to grant certiorari in *Cramer* v *Metropolitan Savings and Loan Association*, 401 Mich 252, 258 NW2d, 20 reh den 402 Mich 954, 960 (1977), cert den 436 US 958, 98 SCt 3072, 57 LEd 2d 1123.

This case is merely the Federal Court branch of a refiling in the Michigan Courts of the former litigation, with the addition of a few more parties.

By Mrs. Cramer's continual admission as contained in her petition and appendix, this matter arises out of the same transaction to wit: the foreclosure of a mortgage on her house in 1968. Twelve years of litigation is enough.

Certiorari should be denied.

McCLINTOCK DONOVAN CARSON
& ROACH

By: William P. Thorpe
2150 Guardian Building
Detroit, Michigan 48226
(313) 963-3400

Attorney for Respondents

McClintock Donovan Carson & Roach, James I. McClintock, Michael Doelle, and William P. Thorpe, Metropolitan Savings and Loan Association, a/k/a Metropolitan Savings Association, James I. McClintock, Roger C. Richards and John C. Denyer, jointly, and severally and individually.

Supreme Court, U. S.
FILED
SEP 19 1980
MICHAEL RODAK, JR., CLERK

NO. 80 250

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

VIRGINIA CRAMER, Petitioner-Defendant in Wrongful Foreclosure Action,

(PLAINTIFF) PETITIONER

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOC., JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, Severally and Individually, PLAINTIFFS in Wrongful Foreclosure Action;

McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, Attorneys at Law, Jointly, severally and individually;

ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, Attorneys at Law, Jointly, severally and individually,

FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge,

MICHIGAN SUPREME COURT MEMBERS, Justices Mary S. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., and G. Mennen Williams, Jointly, severally and individually,

RESPONDENTS

PETITIONER'S REPLY TO RESPONDENTS' (2) MEMORANDUMS OPPOSING CERTIORARI

Virginia Cramer, pro se Petitioner
27314 Clairview, Dearborn Hts., Mich. 48127
Telephone: (313) 278-7286

NO. 80 250

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1980

VIRGINIA CRAMER, Petitioner-Defendant in Wrongful Foreclosure Action,

(PLAINTIFF) PETITIONER

VS

METROPOLITAN FEDERAL SAVINGS AND LOAN ASSOCIATION, a/k/a METROPOLITAN SAVINGS ASSOC., JAMES I. McCLINTOCK, ROGER C. RICHARDS and JOHN C. DENYER, Jointly, Severally and Individually, PLAINTIFFS in Wrongful Foreclosure Action;

McCLINTOCK DONOVAN CARSON & ROACH and JAMES I. McCLINTOCK, MICHAEL DOELLE and WILLIAM P. THORPE, Attorneys at Law, Jointly, severally and individually;

ABEL SELBURN, ALLEN COUNARD and WILLIAM R. McFADDEN, Attorneys at Law, Jointly, severally and individually;

FEDERAL HOME LOAN BANK BOARD, Director and/or Official and/or Officer in Charge;

MICHIGAN SUPREME COURT MEMBERS, Justices Mary S. Coleman, Thomas Giles Kavanagh, Charles L. Levin, John W. Fitzgerald, James L. Ryan, Blair Moody, Jr., and G. Mennen Williams, Jointly, severally and individually,

RESPONDENTS

PETITIONER'S REPLY TO RESPONDENTS' (2) MEMORANDUMS OPPOSING CERTIORARI

TABLE OF CONTENTS

page

PART I Reply to Respondent-Allen Counard's Memorandum 2

PART II Reply to Respondents-Metropolitan Federal Savings and Loan, et al, and Respondents McClintock Donovan Carson & Roach et al 11

Index i and ii

INDEX

Constitutional Provisions

U S Const., Article III Sec 2 19

U S Const., Fifth Amendment 19

U S Const., Fourteenth Amendmt. 19

Texts

58 CJS, Monopolies, at 87 19

Regulations

12 CFR 545.601 (4) (iii) 19

Cases

Cooper Stevedoring Co., Inc. v Fritz Kopke, Inc., Tex. 1974, 94 S. Ct. 2174, 2176, note 4, 417 US 106, 109, 40 L Ed 2d 694, 699. 9

PETITIONER'S REPLY TO RESPONDENTS' (2) MEMORANDUMS OPPOSING CERTIORARI

Petitioner's reply herewith is in two (2) parts. Only two (2) Memorandums from the opposition were received by Petitioner.

PART I — Reply to Respondent-Allen Counard's Memorandum

PART II — Reply to Respondents-Metropolitan Federal Savings and Loan, et al, and Respondents McClintock Donovan Carson and Roach, et al

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PART I

PETITIONER'S REPLY TO RESPONDENT-ALLEN COUNARD'S MEMORANDUM

This action is more than legal malpractice against Respondent Allen Counard. (42 USC 1983, 1985, et seq.) Petitioner charges fraud, concealment and deceit together with conspiratorial misconduct (cover-up by and between attorneys on both sides) by a class-based group engaging themselves in invidiously discriminatory practices against a mortgagor-litigent/client as title-holder of

real property. (See Petitioner's Appendix, Volume I, at pages 48a; 58a through 78a)

Further, this action charges certain attorneys with obstructing justice where fraud had been perpetrated upon the Michigan State courts as to a foreclosure on Petitioner's property where there was no "default" on the part of Petitioner-mortgagor at the time of the Foreclosure by Advertisement.

Attorney-Allen Counard (Respondent) is the second attorney whom "Cramer" was forced to hire in the wrongful foreclosure case. Insofar as Respondent Counard is concerned by Petitioner's action, the said parties were always aligned in the courts below as:

Virginia Cramer, Plaintiff
VS
Allen Counard, Defendant, et al

The complaint filed by Petitioner-Cramer in the United States District Court is non-identical with the State case. (58a through 78a) Defendant-attorney-Allen Counard never answered

to the said Complaint filed in the U. S. District Court. The charges are uncontroverted by Respondent Counard.

Further, Respondent-Defendant-Counard did not move for "joining and consolidation" of the Federal case with the State court action. (203a through 222a) No motion for joining and consolidation was filed by said Respondent-Defendant-Counard.

As to the Order remanding in part as to Defendant-Counard only, entered in the U. S. District Court on January 17, 1980, the Court remanded to the wrong jurisdiction where the Wayne County Circuit Court was without jurisdiction while the matter was pending in the Michigan Supreme Court until April 3, 1980, as shown in the lower court records.

Following Petitioner's filing of Notice of Appeal in the United States Court of Appeals, Sixth Circuit, Respondent-Defendant-Counard filed an improper Motion to Dismiss Appeal (463a, 464a) erroneously claiming "joinder"

of the federal action with the state action. Respondent-Defendant-Counard did not file a cross-appeal, and in the failure to cross-appeal the court was without jurisdiction on such contention as to "joinder" of the federal case on "remand" of the State case. The "Order of Remand In Part" as to Defendant-Counard only, made no inference of any remand of the federal action, and certainly made no inference as to any "joinder" of petitioner's actions (465a through 489a).

Diversity of citizenship is not necessary and not a prerequisite under sections 1983, 1985 of Title 42 relating to charges of conspiracy and deprivation of constitutional rights under color of state law. Petitioner-Cramer was forced to hire lawyers. Said lawyers are a part of that class-based group who engaged themselves in invidiously discriminatory practices in misrepresentation, fraud, concealment and deceit against your herein Petitioner-Cramer (their own client)

where she was denied the equal protection of the law by the very simple effect of hiring lawyers.

Petitioner-Cramer has never had a day in court to prove that there was no basis for the foreclosure initiated by mortgagee-Metropolitan Federal Savings and Loan, et al. (See Petitioner's Complaint for Declaratory Judgment, Preamble and Counts Six, Seven and Eight (among others) pertaining to the said attorneys (on both sides) in this case. (Petitioner's Appendix, 21a through 90a)

Further, Petitioner claims "state action" is involved in deprivation of her constitutional right to proceed without counsel, where the State courts forced Petitioner to hire lawyers (among whom, attorney-Counard) who is a co-conspirator in obstructing justice and in violation of Petitioner's civil rights, among which the right to be heard and the right to pay her own taxes, insurances and other assessments on real property with

her own money. In a nutshell, the lawyers prevented a due process hearing, by their misrepresentations, fraud, concealment and deceit, for exploitation purposes.

DIVERSITY OF CITIZENSHIP NOT NECESSARY AND NOT A PREREQUISITE UNDER 1983, 1985 ET SEQ. OF TITLE 42

The federal question is most substantial as important issues arising under the Fifth and Fourteenth Amendments to the United States Constitution.

Respondent-attorney-Counard had in his possession numerous evidentiary items which he could have utilized, but did not, which would have shown that Petitioner-mortgagor-Cramer was not in default of her mortgage and she was not in default in payment of "escrow" at the time of the premature, precipitous and malicious foreclosure action taken by mortgagee-Metropolitan Federal Savings and Loan, et al.

Respondent-attorney Counard was to have managed the case for a period of approximately two (2) years, from about April or May 1970

to about March 1972. During this period of about two (2) years, Respondent-attorney-Counard managed primarily to cover-up for the fraudulent-abandonment of the case by the previous attorney (Abel Selburn) whom your Petitioner-Cramer was forced to hire by the Court's insistence to "hire a lawyer."

The evidence(s) in Respondent-attorney-Counard's possession, for the period of two (2) years, and subsequently, was fraudulently concealed in conspiratorial misconduct, in misrepresentation to the court, and in obstructing justice, together with the fraud, concealment and deceit of attorneys for mortgagee-Metropolitan Federal Savings and Loan, et al. Diversity of citizenship is not necessary and not a prerequisite in cases brought under sections 1983, 1985, et seq. of Title 42. The conspiratorial purpose by and between the attorneys was precisely to deny "Cramer" the equal protection of the law, and to <u>prevent</u> a due process hearing.

DEFENDANT-ATTORNEY-COUNARD (Respondent) IS PRECLUDED FROM RE-RAISING ISSUES AND/OR CONTENTIONS DISMISSED BY UNITED STATES COURT OF APPEALS FOR LACK OF JURISDICTION ON FAILURE TO FILE CROSS-APPEAL, AND NOW LIKEWISE PRECLUDED BY FAILURE TO FILE CROSS-PETITION FOR CERTIORARI

Defendant-attorney-Counard's motion to dismiss appeal filed in the United States Court of Appeals raised the contention that the federal case was "remanded" for joinder with the State case. There was no cross-appeal filed and the said court was without jurisdiction for failure to cross-appeal. Likewise, this United States Supreme Court should not consider such contention. The contention of "joining and consolidation" of the federal case with the State case on "remand" to the Wayne County Circuit Court should not be before this Court as an issue for review in the absence of a cross-petition for certiorari. See, Strunk v United States, Ill. 1973, 93 S Ct 2260, 412 US 434, 37 L Ed 2d 56; Cooper Stevedoring Co., Inc. v Fritz Kopke, Inc., Tex. 1974, 94 S Ct 2174, 2176, note 4, 417 US 106,

109, 40 L Ed 2d 694, 699, (among others) where the Court said that, because no cross-petition for certiorari had been filed, "we therefore lack jurisdiction to consider" a contention being urged.

Respondent-attorney-Counard does not dispute that the "Order" dated January 17, 1980, as a "remand in part" to the Wayne County Circuit Court remanded to the wrong jurisdiction. The State case was in the jurisdiction of the Michigan Supreme Court until April 3, 1980.

Petitioner herein is not a lawyer (which is obvious) and she certainly is no expert in the law, but it appears to her (after pondering extensively) that where the Sixth Circuit, Court of Appeals, said "the motion to dismiss is well taken" was because of the failure to file a cross-appeal. Likewise, this United States Supreme Court should not consider Respondent-Counard's contention for failure to file a cross-petition for certiorari.

Respondent-Counard's memorandum opposing certiorari, therefore, should be rejected by the Court.

PART II

PETITIONER'S REPLY TO RESPONDENTS-METROPOLITAN FEDERAL SAVINGS AND LOAN, et al, AND RESPONDENTS McCLINTOCK DONOVAN CARSON AND ROACH, et al, MEMORANDUM OPPOSING CERTIORARI

Petitioner filed a new, original proceedings Complaint in the Federal District Court (Detroit-Division) 21a through 90a, Petitioner's Appendix, Volume I.

Respondents Metropolitan Federal Savings and Loan, et al, and Respondents McClintock Donovan Carson and Roach, et al, did not answer to said Complaint and therefore, failed to plead or defend.

Respondents' only pleadings filed in connection with Petitioner's Complaint, in the Federal court jurisdiction below were as follows: (130a through 133a)

Objection to Petition for Removal of Cause to the United States District Court for the Eastern District of Michigan (Southern Division-Detroit) and Motion for Remand to State Court

Memorandum of Law in Support of Objection to Petition for Removal of Cause to the United States District Court for the Eastern District of Michigan (Southern Division-Detroit) and Motion for Remand to State Court

Exhibits A and B (134a through 164a) and

Motion to Dismiss (Complaint)
Brief in Support of Motion to Dismiss

(165a through 169a)

Petitioner opposed the said motion to dismiss and also motioned to strike sham and false pleadings (as to the herein Respondents), (170a through 195a) and opposed Respondents' motions to remand (195a through 202a).

Respondents' motion to remand was denied and is not appealable. (See Docket entries, January 17, 1980 DD 1/18/80, Petitioner's Appendix, Volume I, page 8a) "Deft Metro Savings Assoc's Motion to dismiss granted, Motion to remand denied;"

The Federal District Court made no specific disposition as to Respondents McClintock Donovan Carson & Roach, James I. McClintock, Michael Doelle and William P. Thorpe, and dismissed the action. Said Respondents did not answer to Petitioner's Complaint and said parties-defendants failed to plead or defend. See Count 7, Fraud, Concealment or Deception, Attorney Malpractice McClintock Donovan Carson & Roach, Michael Doelle and William P. Thorpe (66a through 75a).

Respondents do not dispute that they perpetrated a fraud upon the court.

Respondents do not dispute that the decision of the Michigan Supreme Court dated October 6, 1977, reported at 401 Mich 252 is based upon false facts.

Respondents do not dispute that they caused the entry of a fraudulent "Order" in the Wayne County Circuit Court on September 27, 1968. (317a, 318a)

Respondents do not dispute that they caused

a fraudulent Sheriff's Sale of Plaintiff's (Petitioner's) property on October 1, 1968. (325a)

Respondents do not dispute that Petitioner's monthly installment payments on the mortgage loan always included principal, interest and "escrow" amounts, and that Petitioner never failed to pay "escrow" prior to the foreclosure.

Respondents do not dispute the figures and accountings in Petitioner's pleadings and that their foreclosure action by publication on May 23, 1968, was by fraud, deception and/or attorney malpractice.

Respondents do not dispute that they refused to accept Petitioner's current payments "on account of the foreclosure."

Respondents do not dispute that the Sheriff's sale of Petitioner's property on October 1, 1968, was in violation of Michigan statutory provisions, and without notice; and that no "deficiency" is shown. (325a)

Respondents do not dispute that no testimony, no proofs, no exhibits, or no other admissible evidence was entered in the court records to support their claim or defense that "she refused to pay escrow". In fact, Respondents do not dispute any charges or allegations in Petitioner's complaint.

Your Petitioner has never had a day in court to prove that there was no basis for the foreclosure, and that said foreclosure was a perpetration of fraud.

RES JUDICATA MAY NOT BE SUSTAINED WHERE THE FORECLOSURE MATTER HAS NEVER BEEN HEARD BY A COURT OF COMPETENT JURISDICTION

The Respondents (Metropolitan Federal Savings and Loan, et al, and their attorneys, defendants herein) assert, in effect, that their fraudulent foreclosure is "res judicata."

The Michigan Supreme Court decision (even though based upon false facts and which the Respondents do not dispute that said decision is based upon false facts) as reported at

401 Mich 252, allows for antitrust defense and assertion of illegality of the mortgage dovenant as to "escrow" funds. See, Gutor International, AG v Raymond Packer Co., Inc., C.A. Mass 1974, 493 F 2d 938.

Further, the federal question of "state action" appears to be resolved by the Michigan Supreme Court decision, in sanctioning the foreclosure, where the State courts actually become a part of the tying-in arrangement as an unlawful combination in enforcing the restrictive covenant of a mortgage (as to "escrow" funds), granting the mortgagee a monopolization of collection of "escrow" moneys, when the mortgagee (Metropolitan) claims they are bound to do nothing with the "escrow" funds. The tying-in arrangement destroys or eliminates competition. (536a)

The "escrow" funds are the properties of the mortgagor (borrower). The mortgagor gets nothing while the mortgagee (lender) self-deals with the said "escrow" funds, in viola-

tion of the Fifth Amendment to the United States Constitution (deprivation of property without just compensation).

"State action" brants the monopolization of moneys (a part of commerce) where the taxes and insurance liabilities of the mortgagor may never get paid while said "escrow" funds are in the specific sole control of the mortgagee (banking and lending institutions). In Janich Bros., Inc. v American Distilling Co., C.A. Cal. 1977, 570 F 2d 848, the Federal court of appeals said, (393a through 410a)

> "To establish a prima facie case of attempted monopolization, a plaintiff must prove three elements:
>
> (1) specific intent to control * * * or destroy competition with respect to a part of commerce,

(commerce = money = for taxes)

> (2) Predatory conduct directed to accomplishing the unlawful purpose

(predatory conduct = leverage of foreclosure, or actual foreclosure on real property for "escrow" funds)

(3) a dangerous probability of success."

(dangerous probability = Mich. Supreme Court 401 Mich 252 and "state action"

> "The phrase 'attempt to monopolize' means the employment of methods, means, and practices which would, if successful, accomplish monopolization and which, though falling short, nevertheless approach so close as to create a dangerous probability of it. * * * In determining whether there was an attempt to monopolize, all of the acts of the defendants should be viewed together."
> Knutson v Daily Review, Inc., C.A. Cal 1976, 548 F2d 795, cert denied 97 S Ct 2977, 433 US 910, 53 L Ed 2d 1094.

Since the Respondents herein do not dispute that the so-called "judgment" dated September 27, 1968, (entered by Thomas J. Murphy, J.) as a finding of "default" in the mortgage, was obtained in the absence of a due process hearing and where no exhibits, no evidence, no proof was entered in the court-hearing record, defense of "res judicata" is not available to the herein Respondents.

> "Defense of res judicata would not be available in subsequent action as result of prior action between same parties where plaintiff's right had not been

> determined in prior action due to lack of opportunity to be heard and present evidence."
> Williams v Murdock, C.A. Pa. 1964, 330 F 2d 745.

(also see, 378a)

Further, see 58 CJS, Monopolies, at 87. "One may not invoke the aid of the courts to enforce provisions of a contract which is invalid as in restraint of trade (or commerce) or tending to create a monopoly." (379a)

(U. S. Const., Article III, sec 2, Judicial power; jurisdiction)

Further, Petitioner challenges the constitutionality of Title 12, Code of Federal Regulations, 545.6-1, et seq., as promulgated under the authority of the Federal Home Loan Bank Board, and more specifically, 12 CFR 545.6-1 (4) (iii) as appears in Point VII, pages 74, 75 and 76 of herein Petition for Certiorari. Petitioner contends that the said regulation bears no reasonable relationship to the power of Congress, and contravenes the Fifth and Fourteenth Amendments to the United States

Constitution where the so-called "escrow" funds are required as "deprivation of property without just compensation" to the mortgagor (5th Amend.), and required in the absence of due process and denial of equal protection of the law, where no taxes are assessed, billed, due, or unpaid (14th Amend.).

" * * * taxes are not valid debts unless lawfully imposed. * * * " Gully v First National Bank, (1936) 299 US 109.

Respondents set forth no basis for a position stated as "res judicata". The final judgment of the Michigan Supreme Court (401 Mich 252) rests upon a federal ground of "state action" involved (among other matters).

Respondents presented no jurisdictional objections to this Court in reviewing the case on certiorari.

* * * * * * * * * * * * * * * * *

Accordingly, for the foregoing reasons and for those reasons presented in Petitioner's petition for certiorari, it is respectfully submitted that certiorari should be granted.

Respectfully,

Virginia Cramer

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Dated:
September 10, 1980